(1989) 03 CAL CK 0062

Calcutta High Court

Case No: Matter No. 2012 of 1988

Aditya Vikram Birla		APPELLANT
	Vs	
Parmanand Agarwal		RESPONDENT

Date of Decision: March 17, 1989

Acts Referred:

- Constitution of India, 1950 - Article 14
- Contempt of Courts Act, 1971 - Section 18
- Penal Code, 1860 (IPC) - Section 166

Citation: 96 CWN 366 : (1992) 2 ILR (Cal) 369

Hon'ble Judges: Manoj Kumar Mukherjee, J; G.N. Ray, J; A.M. Bhattacharjee, J

Bench: Full Bench

Advocate: Saktinath Mukherjee, Amicus Curiae, for the Appellant;

Judgement

A.M. Bhattacharjee, J.

In view of fact that this matter relates to contempt alleged to have been committed in respect of a learned Judge of this Court and the seriousness of the allegations and the resultant importance, the learned Acting Chief Justice thought that the matter should receive the anxious advertence of a larger Bench and by his order dated March 1, 1988, the learned Acting Chief Justice recalled the earlier order dated January 21, 1988, where under the matter was directed to be heard by the regular criminal Bench of two Judges and constituted this larger Bench for hearing of the matter. If we may say with respect, the learned Acting Chief Justice, in his wisdom, adopted the right course, as, even though this matter could have been heard and disposed of by a Bench of two Judges u/s 18 of the Contempt of Courts Act, we ought not to forget, as pointed out by Gajendragadkar, C.J., speaking for the unanimous seven-Judge Bench of the Supreme Court in Keshav Sing''s case--Special Reference No. 1 of 1964 In re. Under Article 143, Constitution of India In the matter of: Under Article 143 of the Constitution of India, that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with

circumspection. Since the Constitution itself and the Contempt of Courts Act, 1971, have entrusted us with these highly responsible and yet highly delicate task to decide about contempt of ourselves, and the type of contempt with which we would have to deal in this case is that of scandalizing a learned Judge of this Court, a decision by a larger Bench would be more likely to inspire greater confidence.

2. As would appear from the Rule issued, it is alleged that the contemner has committed contempt by writing a letter dated December 5, 1987, to the Chief Justice of this Court and a letter dated January 12, 1988, to the Chief Justice of India. In the first letter dated December 5, 1987, addressed to the Chief Justice of this Court, the contemner alleged that even though the suit filed against him by one Aditya Vikram Birla, in the Original Side of this Court, being No. 1056 of 1987, "was not maintainable by this Hon''ble Court" and "it was not the jurisdiction of this Hon''ble Court to entertain this suit" and "no cause of action took place at Calcutta" as "Plaintiff and Defendant (1) both reside in Bombay only", the learned Judge nevertheless "acted to maintain", "had not acted according to law and he had committed offence u/s 166 of the Indian Penal Code, 1860". The contemner further not only alleged that the learned Judge "had not acted according to law and he had committed offence u/s 166 of the Indian Penal Code, 1860", but asserted further that "he had also not complied with the duties to favour Mr. Aditya v. Birla" and that "Mr. Aditya v. Birla had influenced to the Hon''ble Justice to harass me". And the contemner concluded the letter to the Chief Justice with the prayer "to grant permission to get prosecution of the Hon''ble Justice u/s 166 of the Indian Penal Code of 1860 for the offence committed".

3. In the second letter dated January 12, 1988 addressed to the Chief Justice of India, the contemner has stated that though he had "written to the Hon''ble Chief Justice of Calcutta High Court on 5th December, 1987, praying for the grant of permission u/s 166 of the Indian Penal Code of 1860 for the prosecution of the Hon''ble Justice, but till today I have not received replies and" permission" and hence he prayed that "in view of law and justice "to issue necessary directions so that I can get justice sooner". It may be noted that the contemner forwarded copies of his first letter dated December 5, 1987, addressed to the Chief Justice of this Court, to the Chief. Justice of the Bombay High Court and the Chief Justice of India and he also endorsed copies of his second letter addressed to the Chief Justice of India to the Chief Justice of this Court and also to the Registrar of the Supreme Court.

4. The law of contempt of Court as was prevailing till the enactment of the present Act of 1971, was considered to be somewhat uncertain, undefined and, therefore, unsatisfactory. Even the expression ''Contempt of Court'' was not defined in the preceding Act of 1952 or in any other Statute, even though the jurisdiction to punish for contempt, as rightly pointed out in the Statement of Objects and Reasons accompanying the Bill for the present Act of 1971, touches upon two important fundamental rights of the citizen, namely, the right to freedom of speech and the

right to personal liberty. The present Act has accordingly defined Contempt of Court, both Civil and Criminal, in appreciable details and "Criminal Contempt" has been defined in Section 2(c) of the Act as hereunder 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) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court;

(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.

These provisions are virtually statutory adoption of the ob servations of Lord Russel of Killowen in Queen v. Gray 1900 2 Q.B.D. 36 as hereunder:

Any act done or writing published calculated to bring a Court, or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke, L.C., characterised as ''Scandalising a Court or a Judge''. The case of Queen v. Gray 1900 2 Q.B.D. 36 also clearly manifested how groundless, if we may say so with respect, was the assumption made by Lord Morris the year before in the decision of the Privy Council in Mc Leod v. St. Anbyne 1899 A.C. 549 to the effect that committal for contempt of Court by scandalizing the Court itself, had become obsolete in England, though exercise of such power would continue to be necessary in places "consisting principally of coloured population". The leading English textual authorities and the English Law Reports during all these-years since Lord Morris made such observation in 1899 have sadly disproved what the learned Law Lord almost took for granted for reasons best known to him, but not clearly understandable to us. Oswald in his treatise of Law of Contempt has expressed the view that it would be going a great deal too far to say that commitments for scandalizing the Court have become obsolete in England and our Supreme Court in Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra, had also no hesitation in declaring that "it will not be right to say that commitments for contempt scandalizing the Court have become obsolete". This has again been endorsed by a letter decision of the Supreme Court in Rama Dayal Markarha Vs. State of Madhya Pradesh, .

5. The contemner in this case has not only admitted that he wrote the aforesaid two letters to the Chief Justice of this Court and the Chief Justice of India with copies to Chief Justice of Bombay and the Registrar of the Supreme Court, but in all the three Affidavits, filed one after another, he has made most strenuous endeavors to justify

the writing of those letters.

6. In his first Affidavit filed on August 26, 1988, in para 2, he, after admitting those letters, has again asserted that the learned Judge of this Court in deciding the suit in question against him "did not act according to law under the high influences of money, and power of Mr. Aditya v. Birla, the Petitioner of the Suit No. 1056 of 1987", "has not acted according to law due to the influence of Mr. Aditya v. Birla". In para 3 again (wrongly numbered as para 2), he has asserted that the learned Judge admitted the suit and granted interim injunction under the pressure of power and money of Mr. Aditya v. Birla who happens to be one of the biggest industrialists in the country". In para 4 (wrongly numbered as para 3), he has again asserted that the learned Judge '""acted contrary to law ignoring provisions of law with mala fide to protect the interest of the Plaintiff Mr. Aditya v. Birla who is involved in serious criminal charges in Bombay Courts". And in para 5 (wrongly typed as para 4), he has stated that Mr. Birla, Plaintiff in the suit, "acted dishonestly in the filing of the Suit No. 1056/87 at Calcutta High Court with the favour of" the learned Judge and others.

7. In his second Affidavit filed on January 17, 1989, para 1, it is asserted that the "Hon''ble Chief Justice in bad faith has failed to perform duties towards Hon''ble Office of the Chief Justice by ignoring and neglecting" in replying to the letters of the contemner and" "is, therefore, responsible for the violation of Article 51A of the Constitution of India"; in para 2 it is asserted that "dominance of crooks over the judiciary is high handed criminal conspiracy to finish all decencies of this Hon''ble office of the Supreme Court''s Chief Justice"; in para 3 it is asserted that "Hon''ble High Court, Calcutta, has been causing wrongful losses in bad faith to me by entertaining false Suits No. 815/84 and 1056/87, only to carry out unlawful wishes and directions of the Chairman of the Indian Rayon and Industries Ltd., Mr. Aditya v. Birla"; in para 5 it is asserted that "Hon''ble High Court, Calcutta, has acted contrary to law by entertaining Suits No. 815/84 and 1056/87 by ignoring the jurisdiction only to protect the cheating business of excise-evasion of the Chairman of the Indian Rayon and Industries Ltd. and Mr. Aditya v. Birla, though no cause of action has taken place within the jurisdiction of this Hon''ble High Court, Calcutta"; in para 7 it is stated that the "Hon''ble High Court, Calcutta, is under duty to prosecute dishonest Judges involved in this high-handed Criminal Conspiracy of Mr. Aditya v. Birla, the Chairman of the Indian Rayon and Industries Ltd." and that "this Hon''ble Bench-may issue writ under the provisions of the Article 226 of the Constitution of India to maintain the integrity of the Judiciary, to prosecute or to impeach dishonest Judges".

8. in his third Affidavit filed on February 14, 1989, in para 2, it has been asserted by the contemner that "it is due to malpractices of this Hon''ble Court, proceedings of the Matter No. 898 of 1985 are kept secret" to him and his letters "have been ignored to reply to protect the cheating business of excise-evasions of Mr. Aditya v. Birla, and in para 5 it has been questioned as to "why Registrar or others of this

Hon''ble Court involved in this Criminal Conspiracy to cheat me under the provisions of Section 418 of I.P.C. of 1860, should not be prosecuted" and why suitable and immediate proceedings could not be initialed against "the Registrar, and others who have deliberately ignored the proceedings of the Matter No. 898/85 to protect the cheating business of excise-evasions and Contempt of Court of this Hon''ble High Court at Calcutta by the Indian Rayon Corporation Ltd.?"

9. There are number of documents annexed to all the three Affidavits as Annexures. Those annexed to the first Affidavit are not much relevant for our present purpose; but some of those annexed to the second and the third Affidavit may be taken note of. Annexure ''A'' to the second affidavit is a letter of the contemner to the Chief Justice of India with copy to the President of India, where, after stating that the Chief Justice of India is to take up matters pending before the Calcutta High Court and the Bombay Court, it is asserted that "it is necessary in the interest of Judiciary to expose and prosecute Judges and Magistrates involved in Criminal Conspiracy with Aditya v. Birla, the Chairman of the Indian Rayon and Industries Ltd."; Annexure ''B'' is a letter dated November 29, 1988, to the Chief Justice, Calcutta, with copy to the Chief Justice of India, where the contemner has not only reiterated that the learned Judge, in respect of whom he is alleged in this Rule to have committed contempt, "had acted corruptly in the administration of Justice in Matter No. 1056 of 1987", but that the two other learned Judges, who initially issued the Rule for contempt in this case did so "acting in bad faith" and "to protect interest" of the learned Judge and also "to protect interests of the prominent cheater Mr. Aditya v. Birla" and the contemner has questioned further as to why they said two learned Judges "should not be held responsible and prosecuted under the provisions of Sections 166, 217, 218, 219 and 418 of the I.P.C. of 1860". In Annexure ''C dated December 9, 1988, addressed to Chief Justice, Calcutta High Court, with copies to Chief Justice of India and Chief Justice, Bombay, the contemner has alleged that the then Chief Justice of Calcutta High Court and also the other Judges "have acted illegally on the instructions of the corrupt and dishonest Prime Minister of India, who has lost all honours of the Hon''ble Chair of Prime Minister to protect the cheating charges of the super-crook Industrialist, Mr. Aditya v. Birla". He has stated further that if the Chief Justice of Calcutta "is not Competent Authority to prosecute" former Chief Justice of Calcutta and the "Judges involved" in the case against me who have acted illegally in bad faith", then the Chief Justice, Calcutta, "should send report in details to the proper authority". In Annexure ''E'' dated June 20, 1988, the contemner has complained to the President of India about "the Nation suffering from the cruel terror of the corrupt and dishonest Prime Minister who, is also involved in the Criminal Conspiracy u/s 120B of the Indian Penal Code of 1860 with the corrupt so-called Industrialists involved in serious acts of customs and excise-evasions" and has stated further that as a result Mr. Birla has not been prosecuted and Mr. Birla "has also involved" the Chief Justice of Bombay who was then the Chief Justice of Calcutta "only to regularise the corrupt charges of excise-evasion in the Judiciary" and,

therefore, the contemner prayed to the President to "grant permission to prosecute the Chief Justice of Bombay and Prime Minister of India".

10. In Annexure ''B'' to the third Affidavit, being a copy of the letter dated January 30, 1989, addressed to the Chief Justice of India, the office of the Chief Justice of India has been charged with the failure "to preserve independence of the Judiciary by protecting the cheating business of excise evasion of Mr. Aditya v. Birla" "under the unlawful pressure of the Prime Minister of India" and "due to involvement in Criminal Conspirary with Aditya v. Birla". The Chief Justice of India has also been charged with "not acting faithfully" and for "acting contrary to law" "under fear" and "under pressure of money of Mr. Aditya v. Birla and under the pressure of power of the Prime Minister of India". It has also been alleged that "due to unlawful relations with Mr. Aditya v. Birla, Hon''ble President of India has also avoided to make reply" to the letter of the contemner and that "it is nothing but high-handed Criminal Conspiracy against" the contemner and "this great Nation by protecting cheating business of excise-evasions of Mr. Aditya v. Birla".

11. We are fully alive to the fact that the present Rule for contempt having been initiated on the basis of the two letters written by the contemner to the Chief Justice of this Court and to the Chief Justice of India, dated December 5, 1987, and January 12, 1988, respectively, we must ascertain on the basis of those two letters alone as to whether any contempt has been committed by the contemner by scandalising the Court and our decision and order must be based on those two letters only and not on any other or further contempt, if any, disclosed in all these Affidavits and their annexures. And we have given our most anxious and careful consideration to the said two letters extracted at the out-set and we have no manner of doubt that the allegations made in the letter as to the learned Judge not having acted according to law and in compliance with his" duties to favour Mr. Aditya v. Birla and to harass the contemner and that Mr. Birla had influenced the learned Judge to do so, was scandalisation of Court of the gravest nature and, in that context, the request of the contemner in those letters for the grant of permission to get prosecution of the learned Judge u/s 166 of the Penal Code "for the offence committed" only magnified that contempt. For, to say that a Judge is liable to be prosecuted for the commission of, an offence u/s 166 of Penal Code is to say that the Judge has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a Judge, intending to cause, or knowing it to be likely that he would thereby cause injury to any person, is to charge the Judge with the grossest misbehaviour and thereby to shake the confidence of the people in his Court and its administration of Justice.

12. But we have referred to the three Affidavits filed by the contemner and their annexures for several reasons. Firstly, while the present Rule was issued on March 1, 1988, we allowed the contemner to file as many affidavits as he intended to do and to annex therewith-whatever documents he chose to do, and the three Affidavits

filed by him on August 26, 1988, January 17, 1989, and then on February 14, 1989, would only demonstrate that the contemner was given widest possible opportunities of being heard in his defence. And, secondly, even though we are fully satisfied from the contents of the two letters themselves, referred to in the Rule issued, that a contempt by scandalising the Court has been committed by the contemner beyond all reasonable doubt, the manner in which the contemner has sought to justify his action in the Affidavits and the Annexures noted hereinabove would leave no room for any doubt at all that the contemner committed the contempt as deliberately as one could.

13. We are aware that the Law of Contempt of Court has evoked criticism to the effect that the same affects the fundamental right to freedom of speech and that of personal liberty. It is said that there are many things that are wrong with the law of Contempt of Court. It is an arbitrary power. It involves the use of summary process rather than the ordinary procedure. A person can be found guilty of contempt even if he acted in good faith and did not intend to commit contempt. Truth cannot be pleaded as defence. Even the slightest criticism of Courts or comments on pending proceedings can technically be called contempt.

It is designed to virtually eliminate all criticism of the Judiciary. It is supposed to guard litigant before the Court, Judges presiding over Courts, the Judicial process, Courts as institution and the exclusive right of these institutions to deal with certain kinds of matters. In actual fact, the jurisdiction has turned out to be as much of an embarrassment as it purports to be a boon (See, Contempt of Court and the Press--Rajeev Dhavan - 2, p. 175).

Whether these criticisms are well-founded or not is a matter which need not detain us here, since as a result of a series of weighty pronouncements of our apex Court, the law on the point appears to be absolutely settled and even if the law, as the Critics say, has given the Courts ''giant''s power'', all that we need see is that we do not use the same as giant. To borrow from Shakespeare, it may be good to have giant''s power, but what may not be good is to use it'' as a giant.

14. As already noted, the contemner here has taken the sole responsibility of writing these two letters and, be it noted that, whether or not under the law stated hereinafter, he can be allowed to do so, he in fact, notwithstanding his long Affidavits and appreciably long argument for several hours, was not in a position to substantiate any of the allegations made therein. No other attempt was made by him, save filing of the three Affidavits along with the Annexures, to substantiate the facts alleged by him.

15. In Prespective Publications Limited v. State of Maharashtra (Supra) a three-Judge Bench of the Supreme Court endeavoured to formulate the relevant law on the point, without, however, professing to make the same exhaustive and the same has been accepted by a latter two-Judge Bench of the Supreme Court in Rama Dayal

Markarha v. State of Madhya Pradesh (Supra) to be the law to be governed by. One such formula is that while the distinction must be made between mere libel or defamation of a Judge and what amounts to a Contempt of Court, the test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is likely to interfere with the due course of justice by the Court and it is in the latter case that it would be punishable as contempt. Alternatively, the test will be whether the wrong is done to the Judge personally or it is done to the public and the cause of administration of justice also. Following the enunciation of law by B.K. Mukherjee, J., in the decision of the Supreme Court in Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, it was reiterated that the publication of a disparaging statement in respect of a Judge will be an injury to the public or the cause of administration of justice, if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual or prospective litigant from placing complete reliance upon that Judge''s administration of justice or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties.

16. Applying this test, as we must, we do not have any doubt that the allegations made in the two letters written by the contemner and referred to in the Rule, to the effect that the learned Judge had not "complied with his duties" "to favour Mr. Aditya v. Birla" and "Mr. Aditya v. Birla had influenced" the learned Judge "to harass" the defender who is the contemner here, and seeking grant of permission to prosecute the learned Judge u/s 166 of the Penal Code "for the offences committed" are "scurrilous, intimidatory and malicious beyond condonable limits" and "the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the Rule of law by fouling its source and stream". This is what Krishna Iyer J. ruled in re. S. Mulgaokar AIR 1978 S.C. 727 (737-38) and this has been cited with approval in a rather recent decision of Supreme Court P.N. Dua Vs. P. Shiv Shanker and Others, and it may be noted that both In re S. Mulgaokar and P.N. Duda the tests formulated in Perspective Publications Ltd. (Supra) were accepted as the true tests.

17. Reference may also be made to the unanimous five-Judge Bench decision of the Supreme Court in Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, where also it has been ruled that a scurrilous attack on a Judge in respect of a judgment or past conduct has "adverse effect on the due administration of justice" and "has the inevitable effect of undermining the confidence of the public in the Judiciary" and that "if confidence in the Judiciary goes, the due administration of justice definitely suffers".

18. An impression has gained ground that in matters relating to Contempt of Court by scandalising the Court, truth or justification is no defence. In Perspective Publications Ltd. (Supra) the three-Judge Bench appears to have ruled that "in the law of Contempt, there are hardly any English or Indian cases in which such defence

has been recognized". In the five-Judge Bench decision in C.K. Dapthari (Supra) also, the exclusion of any such evidence was approved and upheld on the ground that "if evidence was to be allowed to justify allegations amounting to contempt of Court, it would tend to encourage disappointed litigants - and one party or the other, to a case is always disappointed--to avenge their defeat by abusing the Judge".

19. As is undeniable, the law relating to Contempt of Court affects the fundamental right to freedom of speech guaranteed under Article 19(1)(a) and that is why express provisions had to be made in Article 19(2) saving laws ''in relation to Contempt of Court'', provided however, restrictions imposed by such laws pass the test of ''reasonableness'', as expressly mentioned in that Article 19(2). In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and in several post Maneka decisions, the Supreme Court has discovered ''reasonableness'' as a brooding omnipresence in Article 14 of the Constitution and has ruled that at least the adjectival law, if not the substantive law also, must be ''reasonable, right, just and fair'' before a person may be deprived of his personal liberty under any such law and it is obvious that a sentence of imprisonment for Contempt of Court would deprive a contemner of his personal liberty for the time being. The Contempt of Courts Act of 1971 now expressly provides in Section 17(5) that the contemner has a right to file affidavit in support of his defence and the Court may determine the matter of the charge either on the affidavits or after taking such further evidence as may be necessary.

I, for my part, would therefore have thought that in the context of the prevailing position in law and the provisions of Articles 14 and 21 operating in their activist magnitude, the earlier rule excluding evidence in justification, would require serious re-thinking. But in the case at hand, the question would become purely academic, because, as we have already noted, we have, at no point of time, and any occasion, to shut out any Affidavit or evidence which the contemner intended to file or adduce in this case and the contemner, before and during his long argument in this case, has repeatedly said that he has placed before us whatever he intended to place through his three Affidavits and has had nothing more to add. Since we have, in fact, excluded no evidence or other materials sought to be adduced by the contemner, I do not think I need not peruse the question any further.

20. This brings us to the question of sentence. We have reminded ourselves that in a proceeding for Contempt, the Court does not sentence the contemner with any spirit of revenge, and, in ordinary cases, may regard a sentence of fine as good enough to vindicate its dignity and to meet, the ends of justice. But there are cases and cases, and contempts of different variety, gravity and magnitude, and there are contemners and contemners. As already noted, in the case at hand, the contemner, in his desperate attempt to justify his conduct, has gone on hurling scurrilous and vituperative allegations against a learned Judge in all his three Affidavits filed one after another and, at no point of time, demonstrated, even remotely, any attitude of repentance, nor availed himself of any opportunity to retract or detract and

apologise. He has not been able to show, even though we have afforded him all opportunities, that there was or could be any basis whatsoever for such scurrilous and reprehensible attacks against the Judge of this Court. We have, therefore, no doubt whatsoever that a substantive sentence is called for in this case. But even then, as in a case like this, we impose punishment, more to vindicate the dignity of the Court of Justice than to punish the contemner, we have decided to sentence the contemner to one month''s simple imprisonment only and to pay a fine of Rs. 2000 only, in default, to suffer simple imprisonment for one month more.

21. Mr. Saktinath Mukherjee, a senior Advocate of this Court, was requested to appear in this case as amicus curiae, and we must record, which we hereby do, that we have derived considerable assistance from his very able and comprehensive submissions made by him with his usual fairness.

G.N. Ray, J.

I agree.

Monoj Kumar Mukherjee, J.

I agree.

Contemner punished.