

Court on its Own Motion Vs Vimal Singh

Court: Delhi High Court

Date of Decision: Dec. 8, 2010

Acts Referred: Contempt of Courts Act, 1971 â€” Section 10, 15(2), 2
Criminal Procedure Code, 1973 (CrPC) â€” Section 155
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 21
Penal Code, 1860 (IPC) â€” Section 214

Citation: (2011) 1 JCC 109

Hon'ble Judges: Manmohan Singh, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Sumit Arora, for the Appellant; Sumeet Verma, for contemnor and Vikas Pahwa, for CBI, for the Respondent

Final Decision: Disposed Off

Judgement

Badar Durrez Ahmed, J.

An application had been filed before Sh. Girish Kathpalia, Addl. Sessions Judge, Special Judge (NDPS) District

North, Delhi numbered as M-3/09 entitled CBI v. Vimal Singh. The application was dated 31.09.2009 and had been filed by the learned Special

Public Prosecutor, CBI in the case entitled CBI v. Haji Gul Khan and Anr. which was pending before that court at that time. By virtue of the said

application filed by the learned Special Public Prosecutor, appropriate action was sought against the Respondent (Vimal Singh), in view of the

allegations that he had attempted to offer illegal gratification to the said Special Public Prosecutor.

2. Thereafter, the learned Additional Sessions Judge vide order dated 31.07.2009 directed the Respondent Vimal Singh to show cause as to why

appropriate contempt proceedings be not referred against him to this Court. Subsequently, a reply was filed on 29.09.2009 and, in view of the

stand taken by the Respondent, the reply filed by the accused Abdullah in the case entitled CBI v. Haji Gul Khan and Anr. was also taken on

record. The defense counsel was also heard in view of the contents of the reply of the Respondent.

3. Thereafter the learned Additional Sessions Judge by a detailed order dated 29.03.2010 allowed the application of the learned Special Public

Prosecutor and came to the prima facie conclusion that the Respondent (Vimal Singh) was guilty of criminal contempt u/s 2 (c) of the Contempt of

Courts Act, 1971. Consequently, invoking Section 15 (2) of the said Act, a reference was separately made to this Court for proceeding further

against the Respondent and for award of appropriate punishment u/s 12 thereof. The matter was listed before the learned Single Judge and was

numbered as CCP (REF.) 01/2010 on 26.04.2010. The learned Single Judge issued notice to the contemnor without process fee returnable on

02.06.2010. However, in the meantime, since criminal contempt matters were to be listed before the Division Bench, the matter was put up by the

registry on 30.04.2010 before the learned Single Judge for appropriate orders. Consequently, on 30.04.2010 itself, the learned Single Judge

directed that the matter be registered as Criminal Contempt Petition (Reference) and be listed before the Division Bench and directed that the

cause title would be ""Court on its Own Motion v. Sh. Vimal Singh"". That is how this matter has come up before us.

4. The facts and circumstances giving rise to the action initiated by the learned Additional Sessions Judge are recorded in the detailed order dated

29.03.2010 itself. The same are reproduced hereunder:

2. Briefly stated, in the main case two accused persons namely Hazi Gul Khan and Abdullah were facing trial for offence u/s 21 NDPS Act for

being found in possession of commercial quantity of heroin. The trial was pending for past about 9 1/2 years with both the accused in judicial

custody all through; out of desperation of the accused persons, on 24.07.09 the learned defense counsel mooted a proposal for making the

accused persons plead guilty and for leniency in sentence; learned Special Public Prosecutor submitted that whatever according to merits is called

for, could be done. After the matter was adjourned for final arguments, outside the court room CBI Special Public Prosecutor was approached by

the Respondent, who had been working as pairokar of accused persons. The Respondent asked the learned Special Public Prosecutor, about his

consideration in the matter of sentence and naturally learned Special Public Prosecutor was shocked and reprimanded the Respondent. Thereafter,

the present application was moved.

3. On the next date 31.07.09 when the present application was moved, Respondent was present inside the court room and his statement on oath

only to the extent of his particulars was recorded; detailed statement of Respondent was not taken on the same day so that he may be given

reasonable opportunity to defend himself. As described in order dated 31.07.09, Respondent tried to conceal his address, but while he was

locating his expired driving licence, I noticed his current driving license and immediately seized the same along with his PAN card in order to ensure

his appearance in further proceedings.

4. At the same time, on 31.07.09 a detailed statement without oath was made by the learned Special Public Prosecutor explaining the

circumstances as described above.

5. Since the complaint of learned Special Public Prosecutor also prima facie disclosed offence u/s 214 IPC, CBI was directed to file appropriate

complaint before the court of competent jurisdiction.

6. In his reply, the Respondent Vimal Singh took a stand that being friend of Abdullah, he was looking after the main trial as pairakar; that it is the

counsel of accused Abdullah who approached him and asked him to arrange Rs. 25,000/- for the public prosecutor and Rs. 15,000/- for the

defense counsel himself; that accused Abdullah asked him to verify this demand from learned public prosecutor; and that he simply verified the said

demand from learned Special Public Prosecutor, who refused having demanded any money.

7. In his reply accused Abdullah took a stand that it is the Respondent Vimal Singh who told the accused that he could manage the CBI people for

Rs. 30,000/- but accused Abdullah rejected the offer. Accused Abdullah denied that the Respondent had contacted him to inform that Rs.

25,000/-for prosecutor and Rs. 15,000/- for the defense counsel had been demanded by learned Counsel for accused.

8. In view of serious allegations of the Respondent that it is learned defense counsel who had conveyed the demand, I also considered appropriate

to hear the comments of learned defense counsel. Sh. Jitender Sethi, learned defence counsel stated that he had no comments except that stand

taken by the Respondent is false and intended to malign him.

9. During arguments learned Counsel for Respondent submitted that no money transaction actually took place and the Respondent had simply tried

to confirm the demand conveyed by learned defense counsel with no self interest.

10. I find absolutely no merit in the arguments advanced on behalf of the Respondent. Merely because no money transaction actually took place, it

cannot be said that the Respondent did not try to interfere in the administration of justice. In my considered view, even an offer of bribe to the

prosecutor or any other person involved in the trial is a matter of grave contempt.

11. I also find it meritless to say that the Respondent had no self interest in this case. It is not unknown that often in the name of prosecutors money

is demanded from accused and the same is a source of earning, especially for those persons who were once co prisoners with the accused and

subsequently out on bail or otherwise acquitted. As described above, accused Abdullah specifically denied having requested the Respondent to

confirm the demand from learned Special Public Prosecutor; rather stand of accused Abdullah is that it is the Respondent who came to him with an

offer to fix CBI people.

12. Besides, keeping in mind the respectable standing of learned defense counsel Sh. Jitender Sethi, Advocate at bar I find it not possible to

believe that it is he who would have made a demand of Rs. 25,000/- in the name of Special Public Prosecutor.

13. Act of making an offer of illegal gratification to the learned Special Public Prosecutor, with which the Respondent has been charged, not only

tends to lower the authority of court but also tends to interfere with the due course of judicial proceedings as well as administration of justice, falling

within the ambit of criminal contempt u/s 2(c) of the Contempt of Courts Act.

14. Even if the stand of Respondent is taken on its face value, the same itself amounts to criminal contempt u/s 2(c) of the Contempt of Courts Act

as he tried to interfere in the administration of justice by even confirming the demand from learned Special Public Prosecutor, which was with the

aim to further the process of an illegal demand.

15. In view of above discussion, application of CBI dated 31.07.09 is allowed and Respondent is prima facie held guilty of criminal contempt u/s

2(c) of Contempt of Courts Act. u/s 15(2) of the Act, reference is being separately made to the Hon"ble Delhi High Court for proceeding further

against the Respondent and award of appropriate punishment u/s 12 thereof.

5. It is also pertinent to note that by an order dated 31.07.2009 the learned Additional Sessions Judge had already come to the prima facie

conclusion that the events narrated above disclosed the commission of an offence u/s 214 of the Indian Penal Code regarding the offer of

gratification allegedly made by the Respondent Sh. Vimal Singh in consideration of the learned Special Public Prosecutor screening the accused

Abdullah from legal punishment. It was also noted in the said order dated 31.07.2009 that the offence u/s 214 of the Indian Penal Code was non-

cognizable and was tribal by the Magistrate of the First Class. Consequently, the learned Additional Sessions Judge by the said order directed the

CBI to file an appropriate complaint before the court of competent jurisdiction immediately. It was also clarified that the learned Magistrate before

whom the alleged complaint is filed would look into the matter independently and without considering the observations made by the learned

Additional Sessions Judge under the said order dated 31.07.2009 and in accordance with law.

6. We are now informed by the learned Counsel appearing for the CBI that pursuant to the said direction a CBI case numbered RC 1/2000, EOU

v. New Delhi has been registered. Thereafter, the matter has been investigated u/s 155 Code of Criminal Procedure for the offence u/s 214 of the

Indian Penal Code after taking orders from Sh. Tarun Yogesh, learned Metropolitan Magistrate, Tis Hazari Court, Delhi by virtue of his order

dated 10.09.2009. The learned Counsel for the CBI further informed us that after due investigation, the charge sheet was filed in the Court of the

learned Metropolitan Magistrate on 16.07.2010 and that the case is at the summoning stage and non-boilable warrants had been issued against the

Respondent/accused Vimal Singh on 07.10.2010. The next date fixed in the matter before the learned Metropolitan Magistrate also happens to be

today i.e. 08.12.2010.

7. We have heard counsel for the parties and we are of the view that Section 10 of the Contempt of Courts Act, 1971 has to be kept in mind

before any further steps are taken in this reference. Section 10 of the Contempt of Courts Act, 1971 reads as under:

10. Power of High Court to punish contempt's of subordinate courts-- Every High Court shall have and exercise the same jurisdiction, powers and

authority, in accordance with the same procedure and practice, in respect of contempt's of courts subordinate to it and it has and exercise in

respect of contempt's of itself.

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such

contempt is an offence punishable under the Indian Penal Code (45 of 1860).

8. The proviso to the above Section makes it clear that High Court shall not take cognizance of the contempt alleged to have been committed in

respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. The very same facts which form

the basis of the contempt reference also constitute the ingredients of the alleged offence punishable u/s 214 of the Indian Penal Code and in respect

of which as noted above, the CBI has already registered a case, an investigation has been concluded, the charge sheet has been filed and the

matter is pending before the learned Metropolitan Magistrate. In these circumstances the proviso to Section 10 would clearly come into play and,

therefore, this Court would be barred from taking cognizance of the contempt alleged to have been committed in the present case.

9. Consequently, cognizance of the contempt alleged in the present case cannot be taken by this Court. The reference is accordingly answered and

disposed of.