
(1999) 03 DEL CK 0082

Delhi High Court

Case No: Criminal C.P. No. 4/98

Swati Acharya and Another

APPELLANT

Vs

Aruna Suresh and Another

RESPONDENT

Date of Decision: March 19, 1999

Acts Referred:

- Constitution of India, 1950 - Article 215
- Penal Code, 1860 (IPC) - Section 114, 120

Citation: (1999) 2 AD 724 : (1999) CriLJ 2067 : (1999) 79 DLT 110 : (1999) 49 DRJ 173 : (1999) 1 ILR Delhi 297 : (1999) RLR 232

Hon'ble Judges: S.N. Kapoor, J; A.D. Singh, J

Bench: Division Bench

Advocate: Mr. P.N. Lekhi and Mr. Vijay Chaudhry, for the Appellant; Mr. Arun Jaitley and Mr. Arvind Nigam, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Anil Dev Singh, J.

This is a petition under Article 215 of the Constitution of India whereby the petitioners pray that proceedings for Contempt of Court be initiated against the first respondent who is the Additional Sessions Judge, and the second respondent who is one of the persons against whom the first petitioner lodged a First Information Report, being No.733/95, regarding commission of offences under Sections 114, 120B, 506, 376/511 IPC with Police Station, Janakpuri, New Delhi. The facts relevant for the disposal of the petition are as follows:-

2. The first petitioner is the daughter of Mr. Ajay Acharya and Mrs. Neerja Acharya. According to the aforesaid FIR, the father of the first petitioner Mr. Ajay Acharya died as a result of an illness in the year 1991. During his illness his friend, Mr. Jaswinder Pal Sethi, the second respondent started visiting him at his residence C-4-D/39-B, Janakpuri, New Delhi. It is alleged that the mother of the first petitioner,

Smt. Neerja Acharya, developed illicit relations with the second respondent. They started living as husband and wife even during the life time of Mr. Ajay Acharya. Despite the fact that Mr. Ajay Acharya was suffering from liver problem, the second respondent forced him to drink liquor with a view to get rid of him. After the death of Mr. Ajay Acharya, the second respondent shifted to C-4-D/39B, Janakpuri, New Delhi and has been residing since then with Smt. Neerja Acharya. As per the further allegation contained in the FIR, the second respondent was having evil eye on the first petitioner and was making obscene gestures to her. On October 7, 1995 when the first petitioner went to the bathroom to take her bath the second respondent forcibly entered the same. Upon this, the first petitioner raised an alarm. Smt. Neerja Acharya came at the door step of the bathroom and threatened the first petitioner to follow the directions of the second respondent. Smt. Neerja Acharya also caught hold of the hands of the first petitioner and the second respondent tried to perform "dirty act" with the first petitioner. At that time the paternal grandmother of the first petitioner, Smt. Shyamla Acharya came to her rescue and extricated her from the second respondent and her mother. The police registered the FIR and investigated the same. After investigation, charge sheet was filed against the second respondent and Smt. Neerja Acharya in the Court of the first respondent.

3. Two actions have been attributed to the first respondent which according to the petitioners amount to Contempt of Court: (i) The first respondent on April 7, 1997 issued bailable warrants against the petitioners in the sum of Rs. 3000/- along with notices u/s 350 of the Code of Criminal Code for their non-appearance in the Court with a view to secure their presence even before framing of charges against the accused in gross violation of the procedure laid down in the Code of Criminal Procedure; and (ii) On July 15, 1997 when the petitioners appeared before the first respondent she started scolding & threatening them and asked them to withdraw the complaint, and told them that if they do so, they will receive a sum of Rs. 7 lakhs from the second respondent. When the petitioners refused to accept the offer made by the first respondent they were harassed, humiliated and ill treated by her. The petitioners having become nervous due to aggressive behavior of the first respondent requested for an adjournment to consider the offer. On the next date when the petitioners appeared before the first respondent she offered a draft of Rs.1 lakh to the petitioners with the promise that the balance sum of Rs. 6 lakhs shall be paid to them at a later date. On the refusal of the petitioners to accept the offer, they were again threatened and humiliated by the first respondent.

4. We have heard the learned counsel for the parties at length. It appears to us that in consonance with the decision of this Court in *Anil Kumar Gupta Vs. K. Suba Rao* and another (1974) 1 Delhi 2, the office, in first instance, ought not to have listed the matter before us on the judicial side. The petition should have been placed before the Chief Justice in Chamber for orders and it was for the Chief Justice to decide either by himself or in consultation with other Judges of the Court whether to take

cognizance of the information contained in the petition. It is significant to note that this petition has neither been filed by the Standing Counsel for the State nor the petitioners have taken consent in writing of the Standing Counsel for filing the same u/s 15 of the Contempt of Courts Act, 1971. According to the said provision, the Supreme Court and a High Court can take action either on its own motion or the motion made by the Advocate General or any other person with the consent in writing of the Advocate General. However, in relation to the High Court of Delhi, it is the Standing Counsel for the State who has been authorised for this purpose. In Anil Kumar (supra) it has been pointed out that whether it is a petition under the Contempt of Courts Act or Article 215 of the Constitution where the informant is not one of the persons named in Section 15 of the Contempt of Courts Act, the same should be placed before the Chief Justice for orders in Chamber and the Chief Justice may decide himself or in consultation with the other Judges of the Court whether to take any cognizance of the information. At this stage, it will be convenient to set out the observations of this Court:-

"The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other Judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No.51 of 1973" and to file it."

5. That apart in our view the first respondent has not committed any Contempt of Court. The allegation of the petitioners that the first respondent had issued bailable warrants along with notice u/s 350 of the Code of Criminal Procedure even before framing of charge against the accused persons, is incorrect. Significantly charges were framed against the second respondent and Smt. Neerja Acharya on January 9, 1997. It was on a subsequent date viz. April 7, 1997 that bailable warrants were issued for securing the presence of the petitioners. On April 7, 1997 APP was present for the State and Shri Anupam Sharma was present for the accused persons. Besides, accused were also present on bail. However, petitioners and Head Constable Shish Pal were absent despite service. Therefore, bailable warrants along with notices u/s 350 of the Code of Criminal Procedure were issued for securing the presence of the petitioners and Head Constable Shish Pal. On that date only one witness, PW-1 could be examined. Thus the contention of the petitioners that the bailable warrants were issued along with notices u/s 350 of the Code of Criminal Procedure to secure their presence before the framing of charge, is misconceived. The allegation has been made recklessly without consulting the record. We also fail to comprehend as to how one could move under the provisions of Contempt of Courts Act, 1971 or the Article 215 of the Constitution of India in such a situation or

even in a situation depicted by the petitioners in regard to issuance of bailable warrants against the petitioners for their appearance.

6. The other allegation of the petitioners that on July 15, 1997, the petitioners were asked to withdraw the complaint since the second respondent was willing to pay a sum of Rupees seven lakhs to them and they were harassed, humiliated and ill treated by the first respondent on their refusal to accept the offer, is also misconceived. In order to understand the facts in their correct perspective it will be necessary to refer to the order of the first respondent dated July 15, 1997. This reads as follows:-

| | |
|---------------|---|
| "15.7.97 | 15.7.97 |
| Miss Swati | served Present: None for the State. |
| Ct. Desh Raj | -do- Accused are present on bail. |
| SI Ram Kishan | -do- PW Swati Acharya and Shyam Lata |
| SI Pyare Lal | -do- Acharya are present along with I.O. |
| | (request) In the absence of public prosecutor |
| MHCM | -do- statement of the witnesses cannot be |
| Smt. Shyam | -do- recorded. File be put up on 21.7.97. |
| Lata | for further proceeding. defense |
| | Cl. Anupam Sharma be present |
| | on the date fixed." |

7. The order shows that both counsel for the State as well as the defense were not present and the matter was adjourned due to their non-appearance. In the rejoinder, it is admitted that on July 15, 1997 the case was adjourned due to the non-availability of the Public Prosecutor and due to this, their statements were not recorded. Significantly, in the rejoinder, the petitioners neither talk of any offer made by the first respondent to them on July 15, 1997 nor do they talk of any harassment or humiliation caused by her to them on that date. According to para 7 of the rejoinder, the problem started on July 21, 1997, the date fixed for recording the statements of the petitioners. The para so far as it is relevant to the point in issue reads as follows:-

"it is further submitted that again on 2.5.1997 summons and warrants were issued against the petitioners and the case was fixed for 15.7.1997 on which date the petitioners appeared in Court. However, due to "non-availability" of the Public Prosecutor, statement of the petitioners could not be recorded. The real problem started on 21.7.1997, the date fixed for recording the statement of the petitioners. The petitioners were present in the Court so was the Public Prosecutor but still as per the order sheet dt. 21.7.1997 the Contemner No.1 who was earlier in a great hurry to record the statement of the petitioners for the obvious reasons, did not record any statement on the said date. It is submitted that it was on 21.7.1997 the Contemner No.1 offered an amount of Rs.1,00,000/- to the petitioners and the said

"balance" would be paid later."

8. Thus it is clear that according to the stand of the petitioners in the rejoinder, the trouble started on July 21, 1997. From the rejoinder it appears that the petitioners do not seem to be aggrieved of any action of the first respondent taken on July 15, 1997 as they themselves are saying that their statements could not be recorded due to the non-availability of the Public Prosecutor and it is not stated that an offer was given to them on July 15, 1997 and the petitioners had taken time to consider the same because of the harassment, humiliation and ill treatment meted out to them by the first respondent. There is a clear difference between the stand taken by the petitioners in the petition and the rejoinder. The shift is quite discernible & significant. It demolishes the allegation against the first respondent pertaining to the happenings of July 15, 1998. Insofar as the alleged events of July 21, 1997 are concerned, if the position is what has been depicted in para 7 of the rejoinder, a question arises as to what prevented the petitioners from incorporating them in the petition itself. The allegations seem to be an after thought. The contention of the learned senior counsel for the petitioners that the petitioners were pressurised by the first respondent to accept the offer in such a heinous crime does not commend to us. The plea of the petitioners that the fact that the FDR of Rs.1 lakh was placed on record on 21st July, 1997 shows that the first respondent had connived with the second respondent to pressurise the petitioners to accept the offer even though the offences were non-compoundable. In our view the plea is only to be stated to be rejected. Order dated July 21, 1997 passed by the first respondent reads as follows:-
"21.7.97

Present: APP for the State.

Accused are present on bail.
FDR of Rs. one lac
is on record.

Prosecut-
rix is present.
For further proceed
ing to come up on
28.7.97. "

9. The order nowhere records any direction of the first respondent for placing the FDR on record of the judicial file. The noting appearing on the left hand side of the order is obviously an office noting. The first respondent in the counter affidavit has stated that the FDR was filed by the mother of the first petitioner with the Reader of the Court after the hearing of the case on July 21, 1997. In the circumstances, we see no reason to disbelieve the statement.

10. This is not a case where contempt jurisdiction of this Court ought to have been invoked by the petitioner against the first respondent. It is correct that justice is not a cloistered virtue and she must be allowed to suffer the scrutiny of public gaze, but it does not mean that a litigant or a member of public can wrongly assume that he is

privileged to say anything he likes to say against a Judge. The Judges are to perform quite often disagreeable duties. They can not be maligned for that. Protection must be extended to them so that they are able to function fearlessly. At the same time we would like to emphasise that for the sake of maintaining high quality of judicial standards the staff working in the Courts must be kept in check so that any act on their part may not give rise to any misgivings like the present one. In view of the foregoing discussion, the application is dismissed.