(2019) 05 SC CK 0048

Supreme Court Of India

Case No: Criminal Appeal No. 1223 Of 2015

Rakesh Tiwari, Advocate		APPELLANT
	Vs	
Alok Pandey, C.J.M.		RESPONDENT

Date of Decision: May 10, 2019

Acts Referred:

- Contempt Of Courts Act, 1971 - Section 2(c)
- Code Of Criminal Procedure, 1973 - Section 156(3)

Citation: AIR 2019 SC 2459 : (2019) 6 SCC 465 : (2019) 5 JT 336 : (2019) 7 Scale 718 : (2019) 2 SCC(Cri) 819 : (2019) 2 ALD(Cri) 759 : (2019) 3 CGLJ 85 : (2019) 4 Crimes 365 : (2019) 3 JLJR 61 : (2019) 3 PLJR 61 : (2019) 3 RCR(Criminal) 193

Hon'ble Judges: Arun Mishra, J; Navin Sinha, J

Bench: Division Bench

Advocate: Vishwajit Singh, Ridhima Singh, Sushmit Chauhan, Jagjit Singh Chhabra, Gopal Jha

Final Decision: Disposed Off

Judgement

Arun Mishra, J

1. The appellant, advocate, has been convicted for his undesirable conduct by the High Court vide impugned judgment and order under the Contempt

of Courts Act and has been sentenced to simple imprisonment of six months and a fine of Rs.2000/- and in case of non-payment of fine, to undergo

simple imprisonment for a further period of 15 days. He has also been directed not to enter the premises of the District Judgeship, Allahabad for a

period of six months w.e.f. 15.7.2015 and the contemnor shall remain under constant watch of the District Judge, Allahabad, for a period of two

years; and in case of any objectionable conduct, causing interference in peaceful and smooth functioning of the court, the District Judge has been

asked to report the matter to the High Court.

2. The contemnor has been charged with criminal contempt to the following effect:

Ã¢â‚¬Å“Sri Rakesh Tripathi, Advocate, on 21st December, 2012 during lunch hour without taking permission from C.J.M., Allahabad entered into his

chamber along with 2-3 colleagues and at the said point of time he started hurling filthy abuses to the CJM and the matter did not end there, as he also

raised his hand to beat the Chief Judicial Magistrate and also threatened him of dire consequences. The contemnor also asked the C.J.M. as to why

he has not passed an order for lodging F.I.R. when he had asked for the same. This act on the part of the contemnor constitutes criminal contempt

within the meaning of Section 2(c) of Contempt of Courts Act, 1971, as this act has not only lowered the authority of the Court but also scandalised

the Court and the same has also the tendency of interference with the due course of administration of justice.Ã¢â‚¬â€‹

3. The reply was filed by the contemnor to the effect that he had filed an application on behalf of Akhilesh Kumar Shukla on 19.10.2012 under section

156(3) Cr.P.C. which was heard by C.J.M. of Allahabad on 30.10.2012 and 8. 11.2012 was the date fixed for passing the order. The contemnor

alleged that before pronouncement of the order on 8.11.2012 he saw one of the accused, Sharad Tandon, General Manager, District Industries Centre,

Allahabad, sitting in the chamber of the CJM. He apprehended that his client will not get justice, hence, he moved an application on 8.11.2012 before

the Chief Judicial Magistrate not to pass any order since the contemnor was willing to file a transfer application before the District Judge, Allahabad.

The CJM assured not to pass any order but actually passed an order on the same day by converting application filed under section 156(3) Cr.PC into a

complaint case registered as Case No.13500 of 2012. The CJM took away the application from record.

Thereafter, the contemnor moved an application before the District & Sessions Judge, Allahabad on 9.11.2012 making a complaint against the CJM,

Allahabad.

4. Another application was filed by the contemnor on 30.11.2012 under section 156(3) Cr. P.C. by counsel appearing on behalf of Alok Kumar

Shukla. He stated to the CJM that he had moved an application before the Sessions Judge, Allahabad, hence, CJM should not pass any order. The

same should be placed before the Sessions Judge, Allahabad for assigning the same to some other court. In January, 2013 the contemnor came to

know that the CJM had passed an order on 18.12.2012 treating the application registered as Complaint Case No.1919/2013. Initially, it was registered

as Miscellaneous Application No.1747/XII/2012. Non-bailable warrant has been issued in the same. He did not enter into the chamber of the CJM on

21.12.2012, neither abused nor threatened him to beat. The advocates were on strike on the said date. There was no question of entering the chamber

of CJM or to use filthy language.

5. The High Court has found the contemnor along with 2-3 junior advocates entered the chamber of the CJM and misbehaved as well as attempted to

assault him. No application was filed by him on 8.11.2012 before the CJM not to pass any order. It was a concocted story. The Magistrate did not

reject the application outright and required the complainant to adduce evidence which course was available to him. The contemnor did not pursue the

matter and got the earlier case dismissed as not pressed and filed second application. On this the CJM has again registered the complaint case. The

matter is pending in which non-bailable warrant has been issued against the accused. The allegation of sympathy towards accused by the Magistrate

has been found to be unfounded, baseless and figment of imagination of contemnor. The defense taken has not been substantiated by the contemnor.

6. The High Court has observed that considering the increasing tendency of the advocates in making scurrilous allegations against the Presiding

Officers of subordinate courts has to be curbed. The acts of abusing and misbehaving are on increase. The action of the advocate amounts to

lowering the dignity and majesty of the court. A deliberate attempt to scandalise a judicial officer of subordinate court is bound to shake the

confidence of the litigant public in the system and has to be tackled strictly. Damage is not only to the reputation of the Judge but also to the fair name

of the judiciary. Judges cannot be tamed by such tactics into submission to secure a desired order. The foundation of the system is based on

independence and impartiality of the Judges as well as responsibility to impart justice. In case their confidence, impartiality and reputation are shaken

the same is bound to adversely affect the independence of the judiciary.

7. In our opinion, an advocate is duty bound to act as per the higher status conferred upon him as an officer of the court. He plays a vital role in

preservation of society and justice delivery system. Advocate has no business to threaten a Judge or hurl abuses for judicial order which he has

passed. In case of complaint of the Judge, it was open to the advocate to approach concerned higher authorities but there is no licence to any member

of the Bar to indulge in such undignified conduct to lower down the dignity of the Court. Such attempts deserve to be nipped at the earliest as there is

no room to such attack by a member of noble profession.

8. The role of a lawyer is indispensable in the justice delivery system. He has to follow the professional ethics and also to maintain high standards. He

has to assist the court and also defend the interest of his client. He has to give due regard to his opponent and also to his counsel. What may be proper

to others in the society, may be improper for him to do as he belongs to an intellectual class of the society and as a member of the noble profession,

the expectations from him are accordingly higher. Advocates are held in high esteem in the society. The dignity of court is in fact dignity of the system

of which an advocate being officer of the court. The act of the advocate in the present case is not only improper but requires gross condemnation.

9. It has been observed by this Court in the matter of Mr. Ã¢â‚¬Ëœ Ã¢â‚¬Å¡Ã¢â‚¬Ëœ, A Senior Advocate of the Supreme Court in AIR 1954 SC 557 that an

advocate has to conduct himself in a manner befitting the high and honourable profession. Following observations have been made in para 41 :

Ã¢â‚¬Å“41. .....

Ã¢â‚¬Å“with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially priviledged class of

persons who, because of their priviledged status, are subject to certain disabilities which do not attach to other men and which do not attach even to

them in a non-professional character. ... He [a legal practitioner} is bound to conduct himself in a manner befitting the high and honourable profession

to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of

him in professional matters, he is liable to disciplinary action.Ã¢â‚¬â€‹

10. Similarly in Lalit Mohan Das v. Advocate General, Orissa AIR 1957 SC 250, this Court observed :

Ã¢â‚¬Å“A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can faitly and reasonably be submitted on

behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of

the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and

must not do anything to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made

imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant

was adding insult to injury, because preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision.

Scandalising the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between

an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of

view, the conduct of the appellant was highly reprehensible.Ã¢â‚¬‹

11. The main question urged is as to the sentence to be imposed in the case. In Supreme Court Bar Association v. Union of India & Anr. (1998) 4

SCC 409, this Court has laid down that though it is not permissible for a court to suspend the licence to practice but at the same time it is open to this

Court or the High Court to debar an advocate from appearing in the court. This Court has laid down that though suspension of a lawyer is not

permissible to be ordered but when he is convicted under the contempt of court, it is possible for this Court or the High Court to prevent the advocate

to appear in the court. The Court has observed:

Ã¢â‚¬Å“80. In a given case it may be possible, for this Court or the High Court, the prevent the contemner advocate to appear before it till he purges

himself of the contempt but that is much different from suspending or revoking his license or debarring him to practice as an advocate. In a case of

contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this court possesses jurisdiction, under the Supreme

Court Rules itself, to withdraw his privilege to practice as an Advocate- an-Record because that privilege is conferred by this Court and the power to

grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking

his license to practice as an advocate in other courts or Tribunals.Ã¢â‚¬‹

(emphasis supplied)

12. In Pravin C. Shah v. K.A. Mohd. Ali & Anr. (2001) 8 SCC 650, this Court observed that an advocate found guilty of contempt cannot have an

unreserved right to appear in court, the court may refuse to hear him:

Ã¢â‚¬Å“17. When the rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and

conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court

proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for

dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and

orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a

case or cross-examining a witness on the same day, unaffected by the contemptuous behavior he hurled at the court, would erode the dignity of the

court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates

vesting of power with the High Court to formulate rules for regulating the proceeding inside the court including the conduct of advocates during such

proceedings. That power should not be confused with the right to practice law. While the Bar Council can exercise control over the latter the High

Court should be in control of the former.

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20. Lord Denning had observed as follows in Hadkinson vs. Hadkinson 1952 (2) All ER 567: (All ER p.575B-C)

Ã¢â‚¬Â¦I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his

disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the

truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good

reason is shown why it should not be removed.

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35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed

respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts

thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent-advocates.Ã¢â‚¬â€¹

(emphasis supplied)

13. In Bar Council of India v. High Court of Kerala (2004) 6 SCC 311, this Court has observed thus:

Ã¢â‚¬Å“29. Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings. A

person does not have a fundamental right to practice in any court. Such a right is conferred upon him under the provisions of the Advocates Act which

necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expressions

subject to"", which would include Section 34 of the Act.Ã¢â‚¬Å“

(emphasis supplied)

14. In R K Anand v. Registrar, Delhi High Court (2009) 8 SCC 106, this Court has observed that advocate can be disallowed from appearing in court

on being found guilty of contempt of court:

Ã¢â‚¬Å“238. In Supreme Court Bar Assn. the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and

complete denial of his right to practice law and the bar was considered as a punishment inflicted on him. In Ex. Capt. Harish Uppal it was seen not as

punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly

functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from

appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the self-

protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have

accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or

where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an

advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an

Ã¢â‚¬Å“inconvenientÃ¢â‚¬ court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against

judicial officers and judges to the superior courts. Unfortunately, these examples are not from imagination. These things are happening more

frequently than we care to acknowledge.

239. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a

real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offense and

contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to

protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts

for an appropriate period of time.

240. It is already explained in Ex. Captain Harish Uppal that a direction of this kind by the Court cannot be equated with punishment for professional

misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in

other ways as indicated in the decision. We respectfully submit that the decision in Ex-Capt. Harish Uppal v. Union of India places the issue in correct

perspective and must be followed to answer the question at issue before us.Ã¢â‚¬â€‹

(emphasis supplied)

15. In the instant case the advocate has acted contrary to the obligations. He has set a bad example before others while destroying the dignity of the

court and the Judge. The action has the effect of weakening of confidence of the people in courts. The judiciary is one of the main pillars of

democracy and is essential to peaceful and orderly development of society. The Judge has to deliver justice in a fearless and impartial manner. He

cannot be intimidated in any manner or insulted by hurling abuses. Judges are not fearful saints. They have to be fearless preachers so as to preserve

the independence of the judiciary which is absolutely necessary for survival of democracy.

16. The act stated amounts to criminal contempt of court. The High Court has noted that the concerned advocate did not apologise and has maligned

and scandalised the subordinate court. He has made bare denial and has not shown any remorse for his misconduct. Considering the gravamen of the

allegations the High Court has imposed the imprisonment of SI for 6 months with fine of Rs.2000 and in default to pay fine or to undergo SI for 15

days. He has been restrained from enering the judgeship of Alahabad for a period of 6 months that was to commence from 15.7.2015 and he had

been kept under watch for a period of 2 years. Considering the nature of misconduct, while upholding the conviction for criminal contempt, we modify

the sentence in the following manner :

1. The sentence of imprisonemnt of 6 months shall remain suspended for further period of 3 years subject to his maintaining good and proper conduct

with a condition that he shall not enter the premises of the District Judgeship, Allahabad for a further period of three years in addition to what he has

undergone already. The period shall commence from 1.7.2019 to 30.6.2022. In case of non violation of aforesaid condition the sentence after three

years shall be remitted.

2. However, sentence of imprisonment may be activated by this Court in case it is found that there is breach of any condition made by the concerned

advocate during the period of three years.

3. He shall deposit fine of Rs.2000 as imposed by the High Court. In case of failure to deposit fine he shall not enter the premises of District Judgeship

for a period of three months.

17. The appeal is, accordingly, disposed of. No costs.