

(2018) 09 BOM CK 0076

In the Bombay High Court

Case No : Criminal Contempt Petition No. 01 Of 2016

3RD Joint Civil Judge J D And Jmfc Aurangabad

APPELLANT

Vs

Ravi Tukaram Damodar

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Contempt of Courts Act, 1971 — Section 8, 12, 15(2)
Code of Civil Procedure, 1908 — Order 21 Rule 35
Bombay High Court Appellate Side Rules 1960 — Rule 9

Citation : (2018) 09 BOM CK 0076

Hon'ble Judges : T. V. Nalawade, J;Vibha Kankanwadi. J

Bench : Division Bench

Advocate : S. D. Tambat, R. T. Damodar, S. J. Salgare

Final Decision : Disposed Off

Judgement

Smt. Vibha Kankanwadi, J

1. Present reference has been made for taking action under Section 15 (2) of the Contempt of Courts Act, 1971 by the then 3rd Joint Civil Judge

Junior Division and J.M.F.C., Aurangabad Miss. Huma A. Ansari (the petitioner is referred to a 'Presiding Officer' henceforth) against in all nine

persons.Â Notice has been issued to respondent No.1 only by this Court.Â A show cause notice was issued to him and he has given reply.Â Â Â

2. The Presiding Officer joined Judiciary in August 2006 and was posted at Aurangabad from 10th June 2013.Â Execution Petition bearing Regular

Darkhast No. 30 of 2011 was before her Court.Â One advocate Mr. S. R. Nehri was representing the decree holders and earlier one Mr. Nishant S.

Mansingka and Mr. Survase Patil were representing judgment debtor No.1 and obstructionist.Â Present respondent No.1 â?" contemnor was

representing obstructionist.Â The Presiding Officer has given the checkered history behind the execution petition.Â It is stated that, the decree

holders were the original plaintiffs in Regular Civil Sit No. 52 of 1993Â which was filed for recovery of possession.Â The defendants in that suit

were duly served but they did not contest, and therefore, suit was decreed exparte.Â The defendants had filed appeal.Â Appeal came to be allowed

and the proceeding was remanded, and parties were directed to appear before the trial Court on 31st March 2004.Â A specific order was passed for

them that, they should file written statement on or before 12th April 2004.Â However, the judgment debtors i.e. then defendants did not appear and

again a decree came to be passed against them on 31st March 2005.Â Again the defendants preferred appeal, but there was delay and therefore

they had moved an application for condonation of delay.Â The said application came to be rejected on 10-04-2007.Â The then defendants had

preferred Second Appeal No. 594 of 2007, but it was also dismissed.Â Under such circumstance the decree had attained the finality, and therefore,

the execution petition bearing No. R. D. No. 30 of 2011 came to be filed.

3. It has been further informed that, the judgment debtor No.1 had filed Regular Civil Suit No. 34 of 2001 challenging the decree passed in Regular

Civil Suit No. 52 of 1993 on the ground of fraud and misrepresentation.Â The said suit travelled up to Hon'ble Apex Â Court and was dismissed in

SLA (Civil) No. 1972 of 2011 on 11-022011.Â Therefore, the said decree in that proceeding had also attained finality. Thereafter, each judgment

debtor and obstructionist had independently challenged the original decree on number of occasions on various grounds and all those orders are in

favour of decree holders. Thereafter the judgment debtors raised objection in the execution petition by filing applications at Exhibit 32 and 39, again on

the ground that the decree has been obtained by fraud on the strength of forged sale deed.Â That claim was dismissed by this Court by order dated

01-08-2013 in Writ Petition No. 8527 of 2011. Thereafter again the judgment debtors and obstructionist resisted the execution petition on the same

ground by filing applications at Exhibit 18, 36, 61, 68.Â All these applications were decided on merits on 25-06-2014.Â Orders below those exhibits

have also attained finality.Â Ultimately the possession warrant was issued under Order 21 Rule 35 of Code of Civil Procedure.Â However again

applications at Exhibit 80, 81, 84, 85, 88, 89, 100, 102, 107, 112, 113, 115, 118, 120 were filed reiterating the same claim and contentions. All those applications were again decided and came to be rejected on 16-12-2014. Again the matter was taken up before Hon'ble Apex Court in SLA No.

22002 &" 22003 / 15, and it came to be dismissed on 31-08-2015. Thereafter, also on number of occasions various applications were filed on the same claim and contentions and they have been rejected. An application was filed at Exhibit 179 by the decree holders on 27-07-2015 for reissuance of possession warrant with prayer for handing over vacant possession of suit land as per Judgment and decree by demolishing structures on the suit land.

That application came to be decided on merits and was allowed on 17-08-2015. That order was confirmed by this Court in Writ Petition No. 8797 of

2015 on 07-10-2015. Obstructionist Mohammed Aslam Abdul Razzak then appointed the contemnor &" respondent No.1 on 22-09-2015 by filing

application at Exhibit 195 for stay to the execution proceeding again on the contention of fraud and misrepresentation by taking the matter on board.

Considering the urgency in the matter by the obstructionist and paying no attention towards the contemptuous body language, raised pitch of voice and hard insistence, the Presiding Officer took that application for adjudication and after hearing, rejected the same on 22-09-2015.

4. Again on 29-10-2015 the matter was taken on board by the contemnor by filing application-cum-complaint of alleged fraud and forgery against the

decree holder and his advocate at Exhibit 206. Say of the other side was called. On the date fixed, contemnor repeated his behaviour. Despite

oral direction he has not behaved properly but threatened the Court of dire consequences by saying that if order is not passed in favour of his client,

Court shall land in trouble and face defamation. At that time also the Presiding Officer ignored the misbehaviour and pressurizing tactics of the

contemnor. The said application was adjudicated and rejected on 30-11-2015.

The said order passed by the Presiding Officer was confirmed by this Court in Writ Petition No. 1449 of 2015 on 10-12-2015. Again the contemnor

took the said case on board vide application Exhibit 217 on 27-11-2015 for stay of possession warrant. Again considering the urgency the

application was adjudicated and rejected. It was later on revealed from report

of the bailiff that the possession warrant was already executed on 26-11-2015.Â Again no attention was paid to the contemptuous and misleading conduct on the part of the contemnor.Â In applications Exhibit 195, 206 and 217 filed by the contemnor again the same contentions, which were rejected up to the Hon'ble Apex Court, were reiterated and they were mere abuse of process of law.Â Sufficient opportunity was given to the judgment debtors and obstructionist to take their grievances to logical end.

However, the contemnor was bent upon to scandalise the Presiding Officer.Â

5. It is informed that the contemnor distributed first pamphlets in Marathi reflecting scurrilous imputations contending that on the strength of fabricated sale deed, which is in Urdu language, false suit bearing Regular Civil Suit No. 52 of 1993 was instituted and at the stage of argument itself it was

consigned to record room where decree holders and their advocate had infiltrated false and fabricated Judgment and decree bearing forged signature

of then Presiding Officer.Â It was also stated that the decree was got executed by offering bribe to the present Presiding Officer.Â In the said

pamphlets the delinquents as well as the contemnor threatened to go on hunger strike. Accusations made in the said pamphlets are malicious, flagrant,

humiliating, defamatory and made with intent to disrespect and disrepute to the Honour of the Court and lower down the dignity.Â It was also

intended to cause poison the fountain of justice by shaking the confidence of people in Administration of Law. Being an advocate the contemnor was

under obligation to restrain his clients from resorting to illegal and unfair practice. The contemnor and his clients went on hunger strike in front of the

office of the Collector, Aurangabad without taking prior permission from appropriate authority between 09-12-2015 to 11-12-2015.Â This act was

nothing but scandalizing and pressurizing the Administration of Law.Â Assistant Superintendent of District Court Aurangabad Mr. N. N. Kulkarni

(Protocol Officer) had visited the Collector Office and he noticed those posters and banners reflecting contemptuous allegations against the Presiding

Officer.Â Photograph of the said banner was taken by him in his mobile.Â Copy of it has been attached to the reference.Â

6. It has been further informed that, during hunger strike the contemnor, in collusion with other respondents, displayed posters and banners casting

aspersions on the Presiding Officer as well as the advocate representing decree

holder. They presented a memorandum to the Resident Deputy Collector, Aurangabad exhibiting their inability to start agitation outside the Parliament House at New Delhi due to ongoing winter sessions and security purposes. It was stated that, due to those difficulties they have chosen the place in front of the office of the Collector At Aurangabad. Copies of the same were also given to the Hon'ble Chief Justice of Bombay High Court. Wide publicity was given to the news in a newspapers, especially Marathi daily newspaper 'Divya Marathi' and 'Sakal' on 10-12-2015. Again on 22-12-2015 the contemnor in collusion with other respondents issued and distributed second pamphlets in Hindi in Court rooms, court premises and vicinity of District Court, Aurangabad. In the said pamphlets they again contend the same material regarding forgery against the advocate for the decree holder and libel upon the Presiding Officer calling her imprudent, irrational and a corrupt Judge who has illegally ruined the lives of hundreds of occupants of suit land and place them in desolation. They had demanded compensation of Rs.50 lakhs. The said pamphlets were again defamatory, contemptuous and amounted the scandalizing the Courts of Justice. Contemnor did not stop, again he acted maliciously and in collusion with other respondents again distributed pamphlets on 04-01-2016 in District Court premises demanding action against the Registrar of the District Court. In that pamphlet also imputations were made against the Presiding Officer.

7. Under these circumstances the Presiding Officer issued show cause notice to the contemnor on 21-01-2016 and to the other respondents on 03-02-2016. Contemnor gave reply to the same on 05-02-2016. He did not tender apology rather boldly admitted his conduct and behaviour. Again false allegations have been made and called the Presiding Officer as a liar and white collar danger criminal, threat to the esteem of judiciary and nation but also challenged her to initiate contempt proceedings against him. Fingers have been pointed towards her integrity in the said notice reply.

8. The Presiding Officer contends that, when entire opportunity was given to the judgment debtors and the obstructionist and the orders had attended finality either from this Court or from Apex Court, there was no ground for the judgment debtors as well as the obstructionist to reiterate same points

again and again.Â Therefore, taking into consideration all these facts, the Presiding Officer has referred the case to this Court under Section 15 (2) of the Contempt of Courts Act, 1971 to take action against him and others.Â

9. As aforesaid by order dated 13-04-2016 notice was issued to respondent No.1 only in form No. I under Rule 9 of Chapter XXXIV of Bombay High

Court Appellate Side Rules 1960.

10. Respondent No.1 has filed his affidavit-in-reply which is at page No. 151 onwards.Â He has denied those contents which are not specifically

admitted by him.Â At the outset he has tendered apology for what he might have inadvertently done by any means which disrespect, lower down

Majesty of Hon'ble Judiciary.Â But he has carved out the allegations made against the petitioner i.e. the Presiding Officer, Advocate Mr. S. R. Nehri

and Mr. S. K. Khan.Â He has stated that, he had appeared in the matter i.e. R. D. No. 30 of 2011 for the first time on 22-09-2015.Â He had given

application for, taking the matter on board,Â second was the objection application, third was the Vakalatnama, and fourth was the List of Documents.

He had tried to say that, Regular Civil Suit No. 52 of 1993 was filed on the basis of Urdu Sale deed Exhibit 26.Â The said sale deed was in respect of

Survey No. 22 / 2, Padampura, Aurangabad.Â He got the said sale deed translated from M. R. F. Registered Translation Agency and it was revealed

that the said Urdu Sale Deed is of Survey No. 17 of Padampura, Aurangabad.Â It was stated in the objection application by him that, if the execution

of the decree is not stayed then there will be a miscarriage of Justice.Â After hearing arguments, the said application was rejected.Â He had gone

through the documents which he had filed.Â The petitioner i.e. Presiding Officer had marked the application and one Exhibit number to two

documents i.e. Exhibit 194 i.e. Vakalatnama and List of Documents were not marked.Â Therefore, he requested the Presiding Officer to correct the

mistake.Â It was assured to him that, his request would be fulfilled later.Â He left Court hall after the assurance.Â

11. Thereafter on 06-10-2015 and 07-10-2015 detailed news was published in Marathi daily newspaper 'Lokmat' and 'Lokmat Times' narrating the

facts.Â He obtained copy of application No. 3822 of 2015.Â He came to know that, the Presiding Officer has not corrected the mistake of marking

same exhibits for two documents.Â He again made request on 29-10-2015 to the

same effect.Â On that day he had submitted arguments.Â On the said application say of the other party was called.Â He had again inspected and perused all his documents.Â He found that, list of document was not on the file of R.D. No. 30 of 2011.Â He therefore raised strong objection. Presiding Officer then asked the Clerk to search for all the missing documents.Â It was assured to him that all the missing documents would be kept in the said file.Â He again left the Court hall.Â On same day after completion of his work when he met the Clerk of the Presiding Officer in Court premises in solitude and asked about his documents, the Clerk gave him reply that since 22-09-2015 the file is in the custody of the Presiding Officer.Â Again on the third time i.e. on 06-11-2015 he had filed application for issuance of search warrant for missing documents Exhibit 4 and 39 from the file Regular Civil Suit No. 52 of 1993. Say of the other side was called.Â He again asked about the whereabouts of the missing documents. The Presiding Officer had given a look at the Clerk and then replied that the work of searching of missing documents is going on.Â He thereafter left the Court premises.Â On the fourth time i.e. on 27-11-2015 he filed four documents, one was to take the matter on board, second to recall the Demolition Warrant, third production of documents and fourth list of documents.Â He made his submissions again.Â After completing his arguments he again enquired the Presiding Officer, whether his missing documents dated 22-09-2015 have been found ?Â Again the Presiding Officer looked at the Clerk and again gave the same answer that the search is going on. Application was filed on 02-12-2015 before the Hon'ble Chief Justice with subject, â?? To be taken immediate legal action against corrupt - the Petitioner. â??Â (Annexure â??R-21â??).Â Another application was given to the learned Principal District Judge, Aurangabad on 14-12-2015. He has quoted some part of Roznama in R. D. No. 30 of 2011 and it is stated that the documents were found on 16-12-2015.Â He has therefore raised question as to where those documents were from 22-09-2015 to 16-12-2015.

12. The respondent No.1 has thereafter stated that, he had filed â?? Memorandum of Fast Unto Death,â? on 02-11-2015, with learned Principal District Judge, Aurangabad.Â Similar application was given on 26-11-2015 to the Hon'ble chief Justice.Â He has denied the allegation that his

behaviour in Court hall on 22-09-2015, 29-10-2015, 06-11-2015 and 27-11-2015 was contemptuous, raising pitch of the voice and hard insistence before

the Presiding Officer. He has also denied that he had threatened the Court of dire consequences by saying that, "if order would not be passed in

his favour, Court would land in trouble and face defamation." He has denied having any type of knowledge of any pamphlet until receipt of

show cause notice. He has specifically denied knowledge of pamphlets which were scandalising in nature or pressurizing the Presiding Officer.

He has stated that, Regular Civil Suit No. 52 of 1993 had attained its finality by considering single side of coin, hence by filing complaints against the

Presiding Officer, the question of hampering Administration of Justice cannot be raised; hence the allegation of hampering of Administration of Justice

has been denied by him in toto.

13. He has specifically stated that, it revealed to him that the defamatory pamphlets were distributed against Advocate S. R. Nehri or Mr. S. K. Khan

(Registrar, District and Sessions Court, Aurangabad) and fact that Advocate Mr. Nehri had lodged complaint with District Bar Association,

Aurangabad against him, and therefore, he has raised question as to why Advocate Nehri or Mr. S. K. Khan has not filed any complaint against him in

Court of Law. He says that, Advocate Nehri, Mr. S. K. Khan and others had made conspiracy of distribution of pamphlets to incriminate him in the

offence of Contempt of Court. He has admitted that, in his notice reply he has made true allegations but he has totally denied having knowledge of

pamphlets till receipt of show cause notice by the Presiding Officer. He has also stated that, he has uploaded his statement before electronic media

expressing full faith and confidence in the Judiciary and that statement is prior to the filing of the contempt petition. He has stated that the contempt

petition is not maintainable as he had communication from the office of the Hon'ble Chief Justice stating that inquiry proceeding is taken up against the

Presiding Officer.

14 It is stated by the respondent No.1 that, the Presiding Officer had herself disobeyed the directions of law. Her conduct is against the norms Noble

Profession of Judge, disrepute, humiliated, lower down dignity of the Judiciary and she is poisoning the fountain of Justice by shaking the confidence of

people. The petition has been filed to justify her misconduct, negligence,

omission which she has committed while sitting on the seat of Judgment.Â

He therefore, prayed for dismissing the contempt petition against him.Â

15. In order to ascertain whether the conduct of the respondent No.1 as stated in the petition attract the said definition of "criminal contempt", the

facts are required to be considered, not only from the petition itself, but also from the documents which have been produced, reply and the documents

produced by the respondent No.1.Â For that purpose it will be necessary to reproduce the definition of Criminal Contempt as appearing in the

Contempt of Courts Act,

2. (a) "Contempt of Court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an

undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, 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; or

(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;"

16. We have heard learned advocate Mrs. S. D. Tambat appointed as Amicus Curiae for petitioner, respondent No.1 in-person and learned Addl.

Public Prosecutor Mr. S. J. Salgare for respondent No.2 " State.Â

17. It is submitted by the learned Amicus Curiae that, the reference that has been made by the Presiding Officer gives details of how the execution

proceeding before her had a checkered history. She has also given the copies of the orders which she had passed as well as those have been

confirmed by this Court or by Hon'ble Apex Court.Â When the objections raised by the obstructionist to whom respondent No.1 was representing

had achieved finality, the advocate that is the respondent No.1 ought not to have behaved in such a manner.Â He had distributed the pamphlets

containing allegations of corruption, impropriety and even executing a false

decree.Â Full opportunity was given to the obstructionist as well as the judgment debtors to challenge the decree and it appears that at no point of time any such objection was earlier raised.Â When it was raised, it has been adjudicated.Â The said adjudication had also achieved finality.Â Therefore, there was no question for respondent No.1 to go on hunger strike unto death.Â This conduct on the part of the respondent No.1 is nothing but scandalisation, amounting to interference in the judicial proceedings, lowering the authority of the Court.Â She therefore relied on the decision in, Vishram Singh RaghubanshiÂ VersusÂ State of Uttar Pradesh, reported in (2011) 7 Supreme Court Cases 776.Â In this case the contemnor was advocate of 30 years' standing. Use of uttermost foul language, trying to overawe Judge physically to obtain favourable order and also defame Judicial Officer concerned to make a reference of contempt to High Court; was the issue before the Hon'ble Apex Court.Â Â Â It was observed that, â??In contempt proceedings the Court has to examine whether the wrong was done to the Judge personally or was done to the public.Â The act will be an injury to the public 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 and prospective litigants from placing complete reliance upon the court'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, then note of the same can be taken.â??

It is also observed that, â??The superior Courts have duty to protect Judicial Officers of subordinate courts, taking note of growing tendency of maligning reputation of Judicial Officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose.â??

â??Under such circumstance, an apology tendered by the contemnor cannot be accepted as a matter of course, court can reject same where it is found that words used were calculated and intended to cause insult, and where apology lacked penitence, regret or contrition.â??

18. The learned Amicus Curiae has further relied on the decision in, H. G. RangangoudÂ VersusÂ State Trading Corporation of India Limited and others, reported in (2012) 1 Supreme Court Cases 297. In this case the nature and scope of powers of Court taking cognizance of a criminal contempt

under the Contempt of Courts Act have been reiterated.

19. Respondent No.1 had chosen to defend himself on merits before this Court and while submitting arguments he almost read his say at page No. 151

from paragraph No. 5 onwards.Â The gist of these paragraphs has been narrated above, hence whatever he has been submitted in the form of

arguments is not reproduced.Â

20. Apart from whatever he read from paragraphs No.5 to 24 of his say was that, he had engaged a private handwriting expert namely 'Akshar

Handwriting Analysis, Mirror Kala Academy, Above Indian Overseas Bank, Jalna Road, 7 Hills, Aurangabad.Â It appears that, certain documents

such as the Judgment, decree and deposition in Regular Civil Suit No. 52 of 1993 was sent to the handwriting expert and his confidential report was

called.Â Taking into consideration the scope of the issue before us, we do not want to touch the opinion of the handwriting expert, secondly under

what authority the respondent No.1 had sent those documents for the opinion of the handwriting expert, and in fact which documents were sent is all

in question; because, he cannot be said to possess the original documents like deposition, Judgment and decree in the said suit.Â Thirdly, the further

question is whether the handwriting expert would be justified in giving opinion on the basis of certified copies. Fourthly, the said Presiding Officer who

had signed the depositions, Judgment and decree in Regular Civil Suit No. 52 of 1993 was different than the petitioner in this case.Â The remedy if at

all lies, is elsewhere.Â Further it can be seen that, he has also produced on record the applications, his own Vakalatnama, the Judgment, decree in

Regular Civil Suit No. 52 of 1993, the sale deed dated 29-082006, translation from Urdu to English, and certain newspaper cuttings.Â Again at the

cost of repetition we would like to say that, we cannot go into the aspect as to whether there was any case for the obstructionist to resist the

execution of the decree.Â It has been already decided by this Court in appropriate proceedings so also by the Hon'ble Apex Court.Â Therefore

suffice it to say that, though in the arguments the respondent No.1 contemnor has read paragraphs No.5 to 24 from his say, it can be said that he was

reiterating his own conduct.Â Apart from those documents it appears that he had also made some complaint regarding missing of the documents to

the Principal District and Sessions Judge, Aurangabad and some complaint with

the Hon'ble The Chief Justice of this High Court.Â

21. We have already taken a note of the checkered history.Â Â It is to be noted that, the suit bearing Regular Civil Suit No. 52 of 1993 was decreed

which was for possession. It had attained finality. Thereafter, the judgment debtor No.2 had filed a separate suit i.e. Regular Civil Suit No. 34 of 2001

challenging the decree in Regular Civil Suit No. 52 of 1993 on the ground of fraud and misrepresentation.Â The decree in this suit had also attained

the finality before the Hon'ble Apex Court.Â Thereafter, ultimately it appears that, the execution petition has been filed.Â Time and again objections

were raised on behalf of the judgment debtor as well as by the obstructionist to whom respondent No.1 was representing. All those applications, the

copies of which are on record, either been confirmed by this Court or by Hon'ble Apex Court.Â Under such circumstance it appears that, the

possession warrant was issued. It will not be out of place to mention here that, even after the issuance of possession warrant, the matter was taken on

board by respondent No.1 when it was not the due date, and thereafter, whatever application was filed on behalf of the client of respondent No.1, was

adjudicated by the Presiding Officer. Her orders have been confirmed by superior Court.Â Under such circumstance resorting to hunger strike,

distributing pamphlets is absolutely unjustified, it is rather highhanded act.

22. Important point is to be noted that, the respondent No.1 has denied the fact of issuing pamphlets but if we peruse 'Annexure â?" M' it clearly says

the name of the contemnor and his mobile number. According to respondent No.1 his rival advocate in the said proceedings Advocate Mr. S. R. Nehri

had published and distributed them.Â On what basis he was making that statement has not been clarified by him.Â He has not proposed to give any

kind of evidence in that respect.Â The allegations which were contained in the said pamphlet which is in Hindi would clearly show that, it was

defamatory, humiliating, malicious and made with intend to disrespect and disrepute to the Honour of the Court. He as well as his clients were the only

persons who were interested in issuing and distributing such pamphlates.

23. We would like to reproduce only relevant para from the said pamphlet ;

â??6. mijh lkjh ckrs 3 jh fnok.kh tt (J.D.) vkSjaxkckn] dq- ggek vUljkj ds laKku esa nks ckj yk;h Fkh (fQj Hkh dq- ggek vUljkj us bu egRoiq.kZ

lcqrk ds tkucq>dj njfdukj fd;k A

7. R.C.S.No. 52 / 93 ds QkbZy esa xqlsM fn;s x;s cukoVh] >qBs ggdweukesa dks dq- ggek vUlkh eWMe n~okjk vaeyesa yk;k x;k(rkjh[k 26-11-

2015 dks 110 ifjokjsa dk vf'k;kuk mtkM fn;k x;k A

8. bl ?kks vU;k; esa R.C.S.No. 52 / 93 ds lHkh oknh] vWM- ,l- vkj- usgjh Hkzâ? VÂ dq- ggek vUlkh eWMe vkSj vU; 'kkehy gS A Bl dkj.k ljdkj ls

esjh ekax gS dh eatqGkuxj] jsYosLVs'ku] vkSjaxkckn] ds gj fiMhr ifjokj dks rqjar 50 yk[k eqvktks feys% ugh rks cgksr cMk tu vkanksyu NsMk

tk;sxk A â??Â

Paragraph No. 8 clearly indicates that, he would undertake a wide agitation against the Presiding Officer and others.Â Thereafter a photograph is

produced at Annexure â?" N which clearly shows that, respondent No.1 was a party with residents of Manjulanagar, who went on hunger strike.Â

The banner that was displayed also contain the name of the Presiding Officer.Â As regards Annexure â?" N we cannot find any denial in the say as

well as argument of the respondent No.1.Â At the same time an Annexure â?" T pamphlet was issued on 09-12-2015 by the respondent No.1.Â

This is in Marathi.Â It is almost a translation of whatever was stated in the AnnexureÂ - M. In paragraph No.6 of Annexure â?" T respondent No.1

has levelled allegations of taking bribe by the Presiding Officer which is not only contemptuous for not being supported by evidence at any stage by

the respondent No.1 but it was with a view to lower down the dignity and integrity of the Presiding Officer.Â Therefore, the above observations from

Vishram Singh Raghubanshi's case are required to be taken a note of. When such wild, baseless allegations are made, and on the basis of this if

agitation in the public, that too, in front of Collector Office is made and if such tendency is not curbed; then it will lower down the moral of the Judges

working in the District Judiciary. When the Hon'ble Apex Court has reiterated the duty of the superior Courts to protect the Judicial Officers of the

subordinate Courts in view of the growing tendency of maligning reputation of Judicial Officers by unscrupulous practising advocates, then, definitely it

will have to be concluded that, the act on the part of the respondent No.1 amounted to 'criminal contempt' as defined in Section (2) of the Contempts

of Courts Act.

24. The Presiding Officer had issued show cause notice to respondent No.1 and he had replied it vide 'Annexure â?" AF' on 0502-2016.Â In the

reply also without any evidence respondent No.1 has again levelled allegations of corruption against the Presiding Officer.Â He has called her as a corrupt Judge, a liar, white collar danger criminal and a great threat for Judiciary and our country.Â He has not only made those allegations but lastly he has challenged her to initiate contempt proceeding against him.Â He had gone one step further and stated that, what he has done is done inspiring only by himself and his client has no relation with the activity and the agitation which he had initiated against her.Â In his say before this Court at paragraph No. 20 he has admitted the allegations made by him in 'Annexure â?" AF' as true allegations.Â Under such circumstance his said conduct as a whole is required to be considered.Â

25. In her reference the Presiding Officer has all the while stated that, on almost all the occasions the behaviour of the respondent No.1 in Court and his insistence of taking the matter on board and passing order in his favour.Â Though the respondent No.1 has denied it, it appears from his subsequent conduct that, he might have behaved in that way because he would not have reacted later on in such a manner.Â There is no reason to disbelieve, the report of the Presiding Officer though she had not taken immediate action of contempt when respondent No.1 acted in such a manner.Â

26. It will not be out of place to mention here that, some advocates do act aggressively (note of such advocates was also taken in the above case of Vishram Singh by Hon'ble Apex Court) with an intention that they should get some order in their favour. Under such circumstance some Judicial officers may fall in the said trap or some Judicial Officers would prefer not to react in any manner.Â Most of the time the Judicial Officer would restrain and show patience but his or her patience should not be taken otherwise. Such unruly behaviour in fact should not be tolerated.Â

27. Thus, taking into consideration the entire activities of the respondent No.1; part of which he has accepted and in that context of his unruly behaviour, taking agitation of fast unto death clearly tend to lower the authority, majesty and dignity of the Court.Â In our opinion the utterances in the pamphlets, the banner at the site of agitation in front of Collector Office, Aurangabad and the communication including the reply to the show cause notice and then again acceptance of the same in reply before this Court, are the

insinuation against the Court.Â Such activity rather not only tend to lower the decorum of the Court but also tend to scandalise the Court.Â We have therefore, no hesitation in holding that even Clause (i) of the definition of 'criminal contempt' would be clearly attracted in fact situation of the present case.Â What is significant to note is that, the respondent â? contemptor has not only attempted to justify his conduct and behaviour before this Court by his reply in response to the show cause notice but in none of the replies or during the course of arguments he has expressed remorse or repentance. He has expressed his a very conditional apology, which cannot be accepted.Â He rather says that, he has by using modern techniques made a statement before electronic media expressing full faith and confidence in the Judiciary and that statement was prior to the contempt petition is available on 'You Tube'.Â But such kind of behaviour just to save himself from any action cannot be accepted at all.Â

28. It is to be noted that, the behaviour of the respondent No.1 was with some intention as it appears because he had crossed the barriers.Â In fact he was only the advocate representing one of the party.Â Duty of the advocate is to plead for his client.Â He should put the case of his client before the Court and make necessary legal submissions within the four corners of law.Â An advocate is not supposed to get himself identified with his client.Â He is not supposed to act like client.Â He being the officer of the Court has more duty towards Courts of Justice than towards his client.Â He is also governed by professional ethics. An advocate can not go on hunger strike against a Judicial Officer, if an order passed by said Judicial Officer is against his client. A Judicial Officer adjudicates an issues before Court on the basis of his or her understanding, legal notion and intellectual capacity. If any party is aggrieved by such order, then law provides appeal, revision, etc. Resorting to the acts like hunger strike, distributing pamphlets containing allegations of corruption, fraud without any evidence and without resorting to approach appropriate disciplinary authority, waiting for the appropriate action by the said authority; under such circumstance by an advocate is absolutely unjustifiable.Â

29. It will not be out of place to mention here that, in Daroga Singh and othersÂ Vs.Â B. K. Pandey, reported in AIR 2004 Supreme Court 2579, it has been observed that, â??When the High Court had decided to proceed with

the contempt proceedings in a summary manner and due opportunity was afforded to the contemnor / contemnors, and after verifying the material available before it, convicted the contemnors, then no fault can be found in the procedure adopted by the High Court. In this case also all the procedure have been adopted and full opportunity has been given to the respondent No.1 to put forth his say.Â

30. Section 8 of the Contempt of Courts Act contends that, it is open to the contemnor to take other defences which would be valid defence.Â Even after giving an opportunity, the contemnor while justifying his acts has tried to point out alleged defects in the procedure adopted by the Presiding Officer in this case.Â However, he forgot to see that the orders passed on various applications raising the same points have been upheld either by this Court or by Hon'ble Apex Court.Â When the objections raised by his clients were dismissed or rejected and the orders had attained finality, then he was not justified in resorting to the hunger strike, distributing defamatory pamphlets etc.Â Here in this case, respondent No. 1 has rather tried to justify his own acts and has even not by tendering any unconditional apology.Â Even if he would have tendered such apology as per Vishram Singh's case (Supra), this Court had the authority to reject the same.Â

31. Considering the reasons above stated, in our opinion, the acts of the respondent No.1 "Contemnor amounted to scandalising the Court and obstruction in the administration of Justice, therefore, we conclude that he has committed 'criminal contempt' of Court. Hence, he is required to be dealt with sternly.Â

32. After disclosing that the respondent No.1 "Contemnor is held guilty, an opportunity has been given to him to submit on the point of sentence.Â He submits that, he does not want to say anything. We have also heard Amicus Curiae for the petitioner and learned Additional Public Prosecutor on the point of sentence.Â They both have submitted that the authority of the Court has been lower down in this case clearly by the Contemnor, and therefore maximum sentence be awarded.Â

33. Now the question that needs to be addressed is about the quantum of sentence.Â The punishment for the Contempt of Court is specified in

Section 12 of the Contempt of Courts Act 1971, which may extend to six months or with fine which may extend to Rs.2000/- or with both.Â The

proviso to sub-section thereof contemplates that the accused may be discharged or the punishment awarded be remitted on apology being made to the satisfaction of the Court.Â In the present case, the respondent No.1 - Contemnor has not only shown disinclination to tender apology, much less, unconditional apology, but has justified his conduct on the ground that he was trying to do justice to his client.Â He got himself identified with his clients and he has crossed the principles of professional ethics for the same.Â He has even challenged the Presiding Officer by saying that, she should go ahead with action for Contempt of Court against him.Â He has further levelled baseless allegations that the Presiding Officer herself has committed Contempt of Court, when her orders were upheld by this Court or Apex Court.Â Hence, in our opinion this is a fit case where sufficient / proportionate punishment should be awarded to the respondent No.1 - Contemnor.Â

34. We make it clear that, whether the acts of commission or omission of Contemnor referred above, though observed as against professional ethics, it is for the Bar Council to decide whether it amounts to professional misconduct requiring disciplinary action or not.Â

35. Accordingly, we proceed to pass following order.

(1) We hold that the respondent No.1 - contemnor is guilty of having committed Criminal Contempt on account of his acts of commissionÂ as referred above.

(2) We impose punishment of Simple Imprisonment for a period of three (03) months to be suffered by the respondent No.1- Contemnor and also pay fine of Rs.2000/- (two thousand), in default, to suffer Simple Imprisonment for one (01) week more.

(3) The show cause notice is made absolute in above terms.

(4) Respondent No.1 - Contemnor is hereby taken in custody.Â

(5) Registry to provide copy of the Judgment to respondent No.1 free of costs.

(6) Fees of the appointed advocate Mrs. S. D. Tambat is quantified @ Rs.5,000/- (five thousand), which should be given from the High Court Legal

Services SubCommittee, Aurangabad.

(7) Contempt Petition is disposed of accordingly.