
(1991) 04 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.C.P. No. 3 of 1982

Court on its own motion

APPELLANT

Vs

Milkhi Ram and Others

RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 2, 3(2), 4
Penal Code, 1860 (IPC) — Section 357, 380, 511

Citation : (1992) CriLJ 2130 : (1992) 1 RCR(Criminal) 351

Hon'ble Judges : Kamlesh Sharma, J; Bhawani Singh, J

Bench : Division Bench

Advocate : R.K. Sharma, for the Appellant; J.R. Thakur and I.R. Rattan, R.K. Punshi and K.C. Rana, for the Respondent

Judgement

Bhawani Singh, J.—This Court received a reference of 28-10-1981 from Sub Judge-cum-Sub-Divisional Judicial Magistrate, Palampur (Kangra District). It disclosed that while announcing the judgment in Case No. 50-11/81 (State v. Milkhi Ram) u/s 380 of the Indian Penal Code, the accused, accompanied by Bhikham Singh C. No. 102, Parkash Chand C. No. 326 and Chuni Lal C.No. 618 of Police Lines Dharamshala, hurled a shoe at the Judicial Magistrate and also used abusive language. He was not handcuffed by the Constables who were ordered to do so. Milkhi Ram was over powered by the court officials and the Advocates present there. It has been desired by this reference that necessary action be taken against the wrong doers.

2. The statement of Milkhi Ram was recorded by the Sessions Judge during the inspection of the jail. In his statement Milkhi Ram has stated that these Constables and Shri Ramanand, Station House Officer, Palampur had forced him to throw the shoe at the Magistrate. Taking into consideration the information then available with the Court, notice to the respondents to show cause why they should not be punished for criminal contempt, was issued on 18-7-1982. Parties filed their respective affidavits and thereafter, some of them were subjected to

cross-examination also.

3. It is important to mention here that proceedings u/s 228 of the Indian Penal Code were started against the accused, wherein he was held guilty and sentenced to simple imprisonment for six months. Before proceeding further, we proceed to decide the objection of maintainability raised by Shri J.R. Thakur on behalf of Milkhi Ram.

4. Shri J. R. Thakur submitted that the present proceedings are not maintainable for the reason that Milkhi Ram has already been tried and punished for offence u/s 228 of the Indian Penal Code. It was also contended that Milkhi Ram cannot be punished twice for the same offence. After carefully examining these questions, we see no substance in these submissions of the learned counsel.

5. Section 228 of the Indian Penal Code envisages that :

228. Intentional insult or interruption to public servant sitting in judicial proceeding.-- Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Criminal contempt has been defined by Clause (c) of Section 2 of Contempt of Courts Act, 1971 (hereafter "the Act"), which reads :

(c) "criminal contempt" means the publication whether by words, spoken or written, or by signs, or by visible representations or otherwise of any matter of the doing of any other act whatsoever which --

(i) scandalizes or tends to scandalize, 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;

7. Then Section 10 of the Act states that :

10. Power of High Court to punish contempts 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 of courts subordinate to it as it has and exercises in respect of contempts 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, 1860 (45 of 1860.)

8. Perusal of Section 228 of the Indian Penal Code envisages intentional insult or

interruption to a public servant while he is sitting in any stage of a judicial proceeding, but in case the misconduct is not only of insulting a Judge but also scandalizes the Court or lowers the authority of the Court, it is punishable as criminal contempt. While Section 228 gives remedy to the Judge to deal with the misconduct himself whereas the act of contempt of Court is not personal to him, since it is a wrong done to the public. In *Bathina Ramakrishna Reddy Vs. The State of Madras*, the Supreme Court quoted, with approval the following observations of at page 835 (of Cri LJ) Chief Justice Willmot in *Rex v. Davies*.

attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations...and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people.

The Court also observed : "The offence of contempt is really a wrong done to the public by weakening the authority and influence of Courts of law which exist for their good.

9. Then, in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, Justice Mukherjea, J. speaking for the Court, observed (at page 241 (of Cri LJ):

It would be only repeating what has been said so often by various Judges that the object of the contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.

There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in Courts. One type of interference is found in cases where there is an act or publication which "amounts to scandalising the court itself an expression which is familiar to English lawyers since the days of Lord Hardwicke vide "*In re Read and Huggouson*", 1742-2 Atk 469 at p. 471 (B). This scandalising might manifest itself in various ways but, in substance, it is an attack on individual Judges or the Court as whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the Courts which are of prime importance to the litigants in the protection of their rights and liberties.

10. In *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, the following observations are important (at page 687 (of Cri LJ) :

The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, unless justice is so administered, there is" the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage". Per Frank Furter, J. in *Offutt v. U. S.* (1954) 348 US 11 :

The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope". Per Judge, Curtis Raleigh quoted in *Jennison v. Baker*, (1972) 1 All ER 997 at p. 1006.

11. These decisions have been relied upon by a division Bench of this Court in Court on its own Motion Vs. R.K. Garg, Court on its own motion v. R.K. Garg where the question raised was that the contemner, a lawyer at District Courts Solan, could be tried u/s 228 of the Indian Penal Code and not u/s 10 proviso, read with Section 2(c) of the Act for hurling shoe at the Judge in the Court. The contention was rejected after analysing the parameters of these two provisions of Indian Penal Code and Contempt of Courts Act, 1971.

12. Similar view was taken by a recent Division Bench of this Court in Cr. M.P. No. 70/87 (*State of Himachal Pradesh v. Durga Singh Thakur Advocate*) decided on 26-5-1987 in which the Court placed reliance on para 7 (at page 255 (of Cri LJ) of *State of Madhya Pradesh Vs. Revashankar*,

...As soon as there is an element of insult in the act complained of, Section 228, Indian Penal Code, is attracted and the jurisdiction of the High Court to take cognizance of the contempt is ousted. We are unable to accept this contention as correct. Section 228 deals with an intentional insult to a public servant in certain circumstances. The punishment for the offence is simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Our attention has been drawn to the circumstance that u/s 4 of the Act the sentence for contempt of Court is more or less the same, namely, simple imprisonment for a term which may extend to six months. The fine is a little more and may extend to two thousand rupees. Section 4 of the Act contains a proviso that the accused person may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. We do not, however, think that a similarity of the sentence in the two sections referred to above is a real test. The true test is : is the act complained of an offence u/s 228, Indian Penal Code, or is it something more than that? If in its true nature and effect, the act complained of is really "scandalising the Court" rather than a mere insult, then it is clear that on the ratio of our decision in *Bathina Ramakrishna Reddy Vs. The State of Madras*, the jurisdiction of the High

Court is not ousted by reason of the provision in Section 3(2) of the Act.

13. In view of the aforesaid discussion, we hold that this court has jurisdiction to proceed against Milkhi Ram in the present proceedings irrespective of the fact that he has already been tried, convicted and sentenced u/s 228 of the Indian Penal Code. Since the misconduct complained of falls under Contempt of Courts Act as well as Indian Penal Code independent of each other, Milkhi Ram can be punished for contempt even if he has once been punished u/s 228 of the Indian Penal Code. In view of independent nature of offences committed by him, principle of double jeopardy is inapplicable in the present case.

14. Now, the question to be seen is whether in the facts and circumstances of this case the respondents or any of them have committed any contempt, and if so, what punishment should be awarded for the commission thereof? We have looked into the case file carefully. In the reference to this Court the Sub Judge-cum-Sub Divisional Judicial Magistrate, Palampur has pointed out two things, namely, the Constables were ordered to handcuff the accused at the stage of hearing him on the question of sentence, but they did not obey the order and produced him without handcuffs, and that the accused took off his shoe and threw it at the Judge which landed at his table. The accused also hurled abuses saying :

Bhain chod tune meri jindgi tabah Kardi".

This act, according to the Magistrate, was pre-designed and the Police officials were responsible therefore which was evident from the fact that the accused was produced without handcuffs despite Court's order and that he was not prevented from throwing the shoe at the Magistrate and abusing him, although, he was standing in between two Constables.

15. In order to examine the above said factors, it is important to examine whether it is only the accused who is responsible therefore or whether the Police Officials are also responsible for the same. In order to hold the Police officials responsible, it is essential to analyse the conduct and the statements given by him relating to this incident.

16. The accused was under-trial for the commission of offence u/s 380, Indian Penal Code in the Court. He was convicted and sentenced to imprisonment. His past conviction was also in similar cases and it was brought to the notice of the Court. We were taken to his statement recorded in this Court. From it, it is quite clear that the accused had been tried, convicted and sentenced in quite a number of theft cases not only by the Court at Palampur but at other places too. We have also seen massive crucial and material deviations and improvements in his version before this Court and Sessions Judge who recorded his statement on visit to the Jail at Dharamshala. At places he has tried to defend the Constables and naming Sub-Inspector Rama Nand to be responsible for compelling him to behave in this fashion.

17. Another witness Tilak Raj alias Tiku has also criminal history. He was also facing trial for offences Under Sections 380/357/511, Indian Penal Code in that Court. He has made every effort to speak against the Police officials by stating that the Police officials were continuously pressing them to throw shoes at the Judicial Magistrate, First Class, Palampur, and also to abuse in dirty language. But except saying so, he did not act upon what he had been pressurised to do. He is equally aggrieved against the Police obviously for reason of criminal cases against him.

18. Certain lawyers have also given account of the incident. But, from their statements it is difficult to draw conclusion against the Police officials. Rather, from the statement of Rajinder Ghogra dated 28-10-1981, it appears that on being asked by the Magistrate why the accused had not been handcuffed as per the Court orders, the Constables replied that they had not brought handcuffs with them. This version supports the stand taken by the Police officials in this case which is being discussed now.

19. The case of the Constables is that they were deputed to take Milkhi Ram and Tilak Raj to the Court on the same day. These under-trial prisoners were taken without handcuffs, since handcuffs were not supplied to them either by the Police Lines or by the Sub-Jail Authorities at Dharamshala. They also say that as per the Jail warrant issued by the Court, it was specifically mentioned that the accused was not to be handcuffed. Previously the learned Magistrate had rejected the prayer of the Police to allow the accused to be handcuffed, since they were likely to abscond and that they were clever and dangerous persons (Annexures RB & RC).

20. They further say that on the date of occurrence, Milkhi Ram was produced in the Court by Constables Bhikham Singh and Chuni Lal, while Parkash Chand remained outside with another accused Tilak Raj. The learned Magistrate accounced the order of conviction and asked them to take the accused outside and produce again when called. They deny that they were informed by the learned Magistrate to put fetters to the accused. They did not hear any such order. When the case was called for the second time, the accused was produced in the Court without fetters since they had none. However, Constable Parkash Chand, who was an escort of accused Tilak Raj, had been looking for fetters, since this kind of requirement had been brought to their notice by Naib-Court Mast Ram. Handcuffs could be got from the Police escort that had come from Police Station Lambagaon which was rendered spare on account of the fact that the accused brought to the Court from that Police Station was released on bail. These handcuffs were applied to Milkhi Ram soon after the incident. Finally, they say that Milkhi Ram misbehaved of his own as a result of grievance for the conviction and sentence imposed by the Court and they had been named since Milkhi Ram had grievance against them also. They also over-powered the accused when the incident took place.

21. Sub-Inspector Rama Nand has been subjected to detailed examination. He

has his own story to tell. In nutshell, he has denied his role in this incident as alleged by Milkhi Ram and Tilak Raj. He has also denied that Police in general had grievance against the learned Magistrate for compelling them to bring accused to the Court without handcuffs. Rather, he has stated that Police should not have any grievance on this account, since the direction of the Court has got to be followed. He has denied that he compelled the accused to misbehave with the Magistrate. He has also said that the accused had been taken to the Court without handcuffs.

22. In the light of aforesaid discussion and the material available on the record of this case, we are of the considered opinion that it is Milkhi Ram alone who is responsible for throwing the shoe at the Magistrate and the Police cannot be held responsible for the same. It was his own act and his inclusion of the police officials in this incident is thoroughly baseless and appears to be for the reason that he had been accused in large number of cases, therefore, had clear animus to involve them in this incident. His production in the Court without handcuffs was in pursuance of Court's directions and the Police officials who had escorted him to the Court, had no handcuffs with them which could be applied before producing him in the Court. Even if it is accepted that the learned Magistrate had directed the production of the accused in handcuffs, it should have been ensured by the Court that he was produced in handcuffs before the sentence was announced. Here, non-availability of handcuffs could be placed before the Court by the Police Constables thereby leaving it to the Magistrate who could postpone the matter to some subsequent date with clear expressed direction to the Police to produce the accused in hand-cuffs. The version of the Police that they did not have handcuffs with them, stands established in this case. They procured handcuffs from the Police Constables from Police Station Lambagaon which became available when the accused of this Police Station was released on bail by this very Court. These circumstances point out that the Police officials did not mean to disobey the Court direction nor they had any grievance against the Magistrate for not allowing them to produce the accused in handcuffs. Rather, it appears that their request to permit them to handcuff the accused was quite correct.

23. We, therefore, hold that the Police officials have not committed any contempt as alleged. Notice against them is discharged. Milkhi Ram has committed the grossest contempt of court, as already observed, and he is held guilty of the same. We feel, in the interest of Justice and to uphold the majesty of the courts, that it is desirable to award jail sentence in addition to fine. We sentence him to undergo simple imprisonment for four months and to pay a fine of Rs. 2000/-. In default of payment of fine, to undergo further imprisonment for two months.