

(2006) 09 DEL CK 0013

In the Delhi High Court

Case No : Cont. Case (Criminal) 2 of 2006

Court on its own Motion

APPELLANT

Vs

Rajiv Khosla and Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 09 DEL CK 0013

Hon'ble Judges : Swatanter Kumar, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Ashok Kashyap, for the Appellant; A.S. Chandhiok and Ritesh Kumar for respondent No. 20, A.S. Chandhiok Mahesh Chibber, for respondent Nos. 4 and 22, N. Hariharan, for Respondent No. 12, H.S. Phoolka and Ravinder and D.C. Mathur and Manu Sharma, for respondent Nos. 18 and 21, for the Respondent

Judgement

Acting C.J.

1. On 7th September, 2006, Mr. Raj Singh, Advocate, respondent No. 14 and Mr. Dalip Rana, Advocate, respondent No. 20 concluded their arguments contending that they had not committed any act which in law could be termed as contempt of court much less a criminal contempt, interfering with the course of justice. After hearing them, we had reserved the case for orders.

2. According to Mr. Raj Singh, Advocate, respondent No. 14, there are no allegations against him and as far as he is concerned, there is no evidence to support the charge of criminal contempt against him. Reference was made to the record before us to show that except a vague allegation made by one Sh. S.P. Sharma, Advocate claiming to be the General Secretary, Rohini Bar Association, in a letter addressed to Hon'ble the Chief Justice on 1.2.2006, there is not even an iota of evidence to implicate him in any of the incidents which have been referred to in the order of the Full Bench of this Court and in the entire record

running into nearly 170 pages. In paragraph 2 of the letter written by Mr. S.P. Sharma to the Chief Justice of the Delhi High Court, it is stated as under:

There was a series of threats rendered to the undersigned and President of this Bar since 31.1.2006. One threat was also rendered to the undersigned by Shri Rajender Singh Rana, Member of Bar Council of Delhi at the instance of Rajiv Khosla, Sanjiv Nasiyar, both c/o Delhi Bar Association and also one expelled member of Rohini Bar Association, namely, Raj Singh, Advocate, whose voices were being heard on the phone call given by Shri Rajender Singh Rana on phone No. 9350885889 of undersigned on 31.1.2006 and threats continued for 4.16 minutes, in respect of which the police has already been informed (police post Sector Rohini Delhi-85, under police Station Prashant Vihar, Delhi-85) but no F.I.R. has been lodged by the police concerned as per knowledge and we are still getting the threats of life and property.

3. It is the specifically pleaded case of the said applicant that his name is not shown in the police report or in any of the reports submitted by the Id. District and Sessions Judge to the High Court and the complaints made by the public and even his picture does not appear in any of the CDs, Video Preparations or Press photographs placed on record.

4. In the affidavit filed by the said respondent on 27th March, 2006, it has been stated that the complaint/letter dated 1.2.2006 of Sh. S.P. Sharma is due to personal grouse, rivalry and malice. The said respondent was the founder President of Rohini Bar Association and Sh. S.P. Sharma is the founder General Secretary of the same. It was decided that if any person desired to be a member of the Bar Association, membership fee by way of only A/C payee cheque should be accepted. But subsequently, it came to the notice that he is accepting fee in cash as well and misappropriating to himself. Though, there was a treasurer but Sh. S.P. Sharma himself was keeping and maintaining all the accounts and ledger. On 23.12.2005, Mr. S.P. Sharma and one Sh. R.K. Gupta came to his chamber at 2 p.m. and asked him to sign a cheque of Rs. 20,000/- for withdrawing the amount from the Association Account, saying that the treasurer was not available and the money was urgently needed. The said respondent refused to do so. Subsequently on 26.12.2005, he was removed from the position of the President of the Rohini Bar Association. Even the primary membership of the said respondent was also terminated. According to this respondent Sh. S.P. Sharma forged certain documents and withdrawn money. The said respondent had lodged a police complaint vide DD No. 28-A dated 4.1.2006 and a complaint to Delhi Bar Council against Sh. S.P. Sharma and Sh. R.K. Gupta on 13.2.2006 was also made. It is a result of this animosity that his name has been unnecessarily dragged into the complaint dated 1.2.2006.

5. The contention of the applicant is that his name does not appear in any of the complaints, report submitted by the police (under Section 173 of Cr.P.C.), reports submitted by the then District and Sessions Judge to the High Court and his picture does not appear in any of the CDs, Video preparations or press

photographs. There is another material factor which cannot be ignored by the court that Mr. S.P. Sharma had made complaint to Hon"ble the Chief Justice of this Court on 1.2.2006 and on that very day, he had also made a complaint to the SHO, Prashant Vihar which is a hand written complaint (page Nos. 21-22 of the record). In that hand written complaint, the name of respondent No. 14 does not appear and no role much less the role of causing threats has been attributed to the said respondent. However, in paragraph 2 reproduced above of the letter dated 1.2.2006 addressed to the Chief Justice, the name of respondent No. 14 has been mentioned whose voices are stated to be heard on the phone and the threats given continued for nearly more than 4 minutes. Even if the said allegation, at the face of it, is taken to be of having some evidentiary value, it appears to be more of a personal dispute between the two parties rather than an interference with the course of justice or interfering with the courts or even lowering the majesty of justice. It has been stated in the complaint that Mr. Raj Singh was an expelled member whose voice was being heard on the phone. The allegation apparently shows that the incident, even if true, relates to certain dispute of the members of the Bar Association. There has to be certain definite material before a person can be dealt with and punished, if found guilty, for criminal contempt of court. A half-hearted attempt was made on behalf of this applicant to argue a general proposition while relying upon the judgment of the Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, that the court has mis-conceived the fact/law in issuing notice to the contemnors. We out rightly reject this contention and in any case the same was not pressed before us. The above discussion clearly shows that there is no definite material against the said respondent on the basis of which he can be found guilty of criminal contempt in various incidents referred to in the record. He has no involvement in these incidents.

6. As far as respondent No. 20 is concerned, the allegation against him appears at page 165 of the record and he has been attributed some role in the statement of Head Constable Vijender, PS Subzi Mandi in his statement recorded u/s 161 of the Cr.P.C. As per that statement, on the first floor of the building, attempt was made by the police to stop the advocates. Still, they climbed to the first floor and did the acts of hooliganism and the advocates who climbed to the first floor included Mr. O.P. Saini, Mr. Dilip Rana, Mr. G.S. Sandhu, Mr. Anil Kumar Chauhan, Mr. Jitender Kumar and Mr. Madan Lal Gupta, who were the main persons. He claims to know their names and can recognize them when they were produced. Besides this statement, according to Mr. Dalip Rana, there is no evidence involving him in any of the incidents. His name has not been mentioned in any of the reports submitted by the then District and Sessions Judge to the High Court. His name is also not shown in any of the reports made by the private persons or the Bar Association to the High Court or even otherwise. According to this respondent he was not even present in Tis Hazari Courts at the relevant time and was appearing in Patiala House Courts. One of his cases which was passed over, was taken up again and during the intervening period, he had went to the

chamber of advocates. He claims that he is not the office bearer of the Tis Hazari Bar Association and as per his supplementary affidavit, he is not appearing in any of the CDs, Video Preparations or the press photographs.

7. He filed his first affidavit on 27.3.2006 stating as under:

3. The deponent submits that he is an officer of this Hon''ble Court and has always taken steps to uphold the majesty of the Courts. No act has ever been done by the deponent which would tend to derogate the dignity and authority of this Hon''ble Court or the Courts subordinate to it. There has never been any act of deponent calculated to impede, embarrass, obstruct or defeat the Administration of the Courts of Justice.

4. The deponent has never been involved in any act or omission that may constitute the Criminal Contempt of this Hon''ble Court. There is no specific allegation against the deponent between the period 2.1.2006 to 24.3.2006 which may tantamount to or which may impair due Administration of Justice. It is submitted that no allegation in the present case is made against the deponent which tends to interfere with the due course of justice. The Deponent has always treated the courts of law as a temple of justice and cannot think of causing any harm or derogation to this institution.

5. It is most respectfully submitted that the Deponent has always practiced his calling under the belief that the legal profession has certain obligation i.e. to render ``Probono publico`` service to the poor and under privileged. He has always performed his duty as a lawyer in assisting the court in administrating justice and has strictly and scrupulously abided by the code of conduct behaving the noble profession and has never indulged in any activity which may tend to lower the image of the profession in society.

8. In the same affidavit, it was stated that on 24.2.2006, he was not present at Tis Hazari Courts and went to Patiala House Courts to appear in the court of Sh. Manish Yaduvanshi, MM, New Delhi, in the case titled as "Citi Bank v. Neeru Sinha", a complaint u/s 138 of the Negotiable Instruments Act. On that very day, he himself filed his vakalatnama for the accused Ms. Neeru Sinha. The case was first called out at around 10.25 a.m. and the matter was passed over as the counsel for the complainant was not present. On the second call, the case was dismissed as withdrawn as a settlement was arrived at between the complainant and the accused. Affidavit of Ms. Neeru Sinha has been filed. He has also filed affidavit of the advocates Sh. Pradeep Sehrawat and Shri Krishan K. Kartik saying that he went to Chamber No. 874-875 along with one Subra Prasar, Advocate and after the case was finished, he even went to chamber No. 880, Patiala House Courts at around 12 "o" clock and had taken lunch with Mr. Om Prakash, Advocate and his associates in chamber No. 917 at Patiala House Courts. Thereafter, he reached Tis Hazari Courts at about 3 p.m. on 24.2.2006. He has filed affidavits of all these advocates along with his affidavit. According to him, he had neither seen that Head Constable nor that Head Constable would

have any occasion to know the name of the applicant. The said respondent filed additional affidavit on 10th July, 2006 and even a supplementary affidavit dated 4.9.2006 thereafter. In the supplementary affidavit besides condemning the hooliganism and vandalism of courts and indiscipline, he also clearly stated in paragraph 16 of the said supplementary affidavit that he does not appear in any of the Cds/Video recordings or the press photographs. He had not, at any point, of time participated in any of the events right from 2.1.2006 to 24.2.2006. We have also examined the records. These averments of the said respondent are found to be factually correct. In order to show his bonafides, he has also stated "It is duty of the deponent not only to uphold the majesty of law, but also he must go a step forward and tender unconditional apology."

9. In view of our discussion and keeping in view the conduct of the respondents during the pendency of these proceedings and settled principle of law that a charge of criminal contempt has to be substantiated by cogent material before the court and for absence of such material in the present case, we are persuaded to take the view that the contempt proceedings against the respondents need to be dropped and they be discharged at this stage of the proceedings itself.

10. Consequently, both these respondents are discharged. However, the discharge of any of the respondents in these proceedings would, in no way, effect the proceedings initiated against them in furtherance to the police report filed before the court of competent jurisdiction u/s 173 Cr.P.C. This order would have no bearing on those proceedings and the prosecution will be entitled to prove its case in accordance with law.