

(1994) 12 DEL CK 0044

In the Delhi High Court

Case No : Criminal Revision Appeal No. 8 of 1994

Court on own Motion

APPELLANT

Vs

S.K. Ahluwalia

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (1995) RLR 82

Hon'ble Judges : Mahinder Narain, J;A.K. Srivastava, J

Bench : Division Bench

Advocate : R.L. Tandon and R.K. Kochhar, for the Appellant;

Judgement

Mahinder Narain, J.

(1) Notice of contempt was issued to a number of advocates who are practicing members of Shahdara Bar Association on the basis of reference which was made by Mr. S N. Dhingra, Add). S J.

(2) In view of the fact that a number of advocates were issued notices and we find it difficult to hear regular matters, in view of the large daily admissions we think it proper that we will deal with notices to each of the advocates separately.

(3) We have heard Mr. R L. Tandon so far as contempt notice to Mr. R.K. Kochhar, Advocate is concerned. The allegations which go to make up the case against him in the reference are in following terms :

"THE fresh elections of the Bar Association has taken place on 9.9.94. The results of these elections were declared and the new Executive has been elected. The members of Bar started appearing in the Courts since morning of 12.9.94. But few Ex-leaders of the Bar and a few other Advocates finding that the witnesses have come in their cases sought adjournments on the ground that the strike was continuing. They stated that the notice issued by Mr. S.K. Ahluwalia, Chairman of Election Committee, so long is not withdrawn shall remain in force and the strike

shall continue. However, the other Advocates stated that the Election Committee had become functus officio after the elections are over and now new Executive has been elected and there was no strike in the bar because no such call has been given by the new Executive. Some of the Advocates including Mr. B.K. Sharma, D.R. Lakhani and R K Kochhar insisted that they would not Court on own Motion vs. A.K. Ahluwalia allow the court to function and examine the witnesses so-long the strike notice issued by Mr. S.K. Ahluwalia is not withdrawn. e. Advocate Mr. B.K. Sharma did not allow the court to function on 19.9.94 when he intervened when the evidence was going on in another case. Mr. R.K. Kochhar another Ex-leader of the bar also insisted that the Court should recognize the strike call given by the Chairman of Election Committee even after the Elections have been held and are over and no work should be done f. On 12.9.94 in a case 5 witnesses were present. The accused persons called their Counsel Mr. Taneja, who stated that he was appearing on behalf of all the accused persons and the exam. of the witnesses started. Mr. R.K. Kochhar appeared in the court when the exam. of witnesses was going on and asked the Court as to how the witnesses were being examined, when the Advocates were on strike. He stated that he represents one of the accused persons while earlier Mr. Taneja had cross-examined on behalf of all the accused persons and stated that he was for all the accused persons. Because of Mr. Kochhar's intervention and attitude, the Court had to adjourn the cross- exam. of two witnesses, while the three witnesses were completed and recorded"

(4) The averments made relate to judicial proceedings in Reference Case No. 3/93, which was a case u/Ss. 498A and 304B, Ipc, a "Bride Burning" case. In this case there were four accused. Mr R.K. Kochhar was appearing for one of them i.e. Smt. Shakuntala, mother of Mr. Yogesh and mother-in-law of deceased.

(5) As the case related to alleged bride burning and the accused were Yogesh Kumar (husband), Naresh Kumar (brother) and their father and mother. As the father died before 6.1.1993, the case was proceeding against three accused only.

(6) The date on which the alleged interference during the due course of judicial proceedings is stated to have been taken place was 12.9.94.

(7) According to the reference from Mr. Dhingra, Additional S J., Mr. R.K. Kochhar did not permit the exam. of witnesses during the on-going strike of Shahdara Bar Association, and thereby he is alleged to have committed contempt of court.

(8) Along with his reply Mr. R.K. Kochhar, Advocate, has filed certified photo copy of the record of proceedings in case No. 3/93.

(9) We have been taken through the said reply to the notice and the said record by Mr. Tandon, and in our view the record does not support any such alleged interference during the due course of judicial proceedings. [In paras 10 to 15 record of proceedings are briefly noticed].

(10) From a narration of the words it is apparent that order sheet of case No. 3

of 1993 states that R.K. Kochhar, Adv. attended the court of Mr. Dhingra when first witness Brij Mohan was examined ; that in view of the "on-going strike" he be excused himself from conducting cross exam. That he prepared the application for recall of the witnesses and thereafter he filed that application for recall of the witnesses. As is clear from the certified copy of the record which has been filed Mr. R.K. Kochhar did not appear to have interfered with due course of judicial proceedings in as much as court was able to record complete evidence of three witnesses on that date and could record exam.-in-chief of 2. If Kochhar had interfered in any exam. of the witnesses, none of the subsequent witnesses would have been examined on that date.

(11) The reply of Mr. R.K. Kochhar is further supported by the order passed by the Addl. S J. on 12.9.94 which reads :

"COUNSEL Sh. R.K. Kochhar for accused Shakuntla and Shri R.K. Taneja Adv. for remaining accused persons. Statement of Public Witness 1 and Public Witness 2 partly recorded and their cross- examination are deferred, on the ground of Strike of Advocates. Examination of these witnesses i.e. Public Witness 3 to Public Witness 5 completed on behalf of all the accused persons. Public Witness 1 and Pw 2 be recalled for their cross-examination and put up for remaining prosecution evidence on 20/12/94."

(12) This part of the order makes it clear as to what had transpired on 12.9.94. It is also clear from the record, which we have seen, that Mr. R.K. Kochhar did not appear to have interfered in the due course of judicial proceedings, nor did he interfere in recording the statements of any of the witnesses. Had it been so, the judge would have surely noted in the order sheet in what manner interference has taken place. As observed above the name of Mr. R.K. Kochhar does not occur on the order sheet except with reference to the statement of Brij Mohan, when the court itself records that Mr. R.K. Kochhar had "humbly" submitted that cross-exam, on behalf of Shakuntala be deferred, which request was ultimately acceded to by the Additional Sessions Judge.

(13) The Additional S.J. apparently also acceded to the request of Mr. Kochhar that the witness Brij Mohan shall be called again because of on-going strike.

(14) We are, Therefore, of the view that Mr. R.K Kochhar, Adv. has not interfered in the due course of judicial proceedings, and so the notice issued by this Court to him, is discharged.