

(2016) 10 SC CK 0077
In the Supreme Court Of India
Case No : Criminal Appeal No. 463 of 2006

Het Ram Beniwal

APPELLANT

Vs

Raghuveer Singh

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 12(1), 2(c)

Citation : (2016) 168 AIC 90 : (2016) AIR(SCW) 4940 : (2016) AIRSC 4940 : (2016) AllSCRCrI 1781 : (2017) 1 ALTcrI 213 : (2017) 1 AndhLDCriminal 181 : (2016) 3 ApexCourtJudgments(SC) 593 : (2017) 1 BLJud 33 : (2017) 2 CalCrILR 510 : (2017) CrILJ 175 : (2016) CrILR 11

Hon'ble Judges : Anil R. Dave and L. Nageswara Rao, JJ.

Bench : Division Bench

Advocate : Prashant Bhushan, Advocate, for the Appellants; Ms. Aishwarya Bhati, Ms. Shobha, Ms. Shrey Damhare, Bonny Mehra, Advocates, for the Respondents

Final Decision : Disposed Of

Judgement

L. Nageswara Rao, J.—The Appellants were found guilty of committing contempt by the High Court of Judicature for Rajasthan at Jodhpur. Simple imprisonment of two months and fine of Rs. 2,000/- each was imposed. Aggrieved by the said judgment, the Appellants have filed these Criminal Appeals.

2. The Appellants along with Sheopat Singh belong to the Marxist Communist Party. Sheopat Singh died during the pendency of these proceedings. It is relevant to mention that Appellants Nos. 2 and 3 are advocates. A prominent trade union activist of Sri Ganganagar District Shri Darshan Koda was murdered on 18.12.2000. Some of the accused were granted anticipatory bail in February, 2001 by the High Court of Rajasthan. The Appellants addressed a huge gathering of their party workers in front of the Collectorate at Sri Ganganagar on 23.02.2001. While addressing the gathering, the Appellants made scandalous statements against the High Court which were published in Lok Sammat

newspaper on 24.02.2001. The offending statements made by the Appellants (from the translated version) are summarised as under:

Appellant No. 1 - "Ex MLA Het Ram Beniwal said that, there are two types of justice in the courts. A thief of Rs. 100/- cannot get bail, if the lathi and gandasi is hit then the courts ask for the statements of the witnesses and diary, but Miglani and Gurdayal Singh committed the murder, even then anticipatory bail had been taken on the application without diary."

Appellant No. 2 - "Navrang Chaudhary, Advocate, District President, CITU said that the general public has lost confidence in the law and justice."

Appellant No. 3 - "MCP Leader Bhuramal Swami naming the judge of the High Court said in attacking way that all around there is rule of rich people whether it is bureaucracy or judiciary."

Appellant No. 4 - "Sarpanch Hardeep Singh told that there was influence of money behind the anticipatory bail of the accused."

The Advocate General gave his consent to Respondent No.1 for initiation of contempt proceedings on 16.01.2002. Thereafter, Respondent No.1 filed a Contempt Petition in the High Court. It was stated by Respondent No. 1 in the contempt petition that baseless allegations of bias and corruption were made by the Appellants against the judiciary. He also alleged that the Appellants were guilty of a systematic campaign to destroy the public confidence in the judiciary.

3. The Appellants filed a common counter denying the allegations made against them. The appointment of the Special Public Prosecutor in the case of the murder of Shri Darshan Koda was in dispute and the Appellants contended that they were agitating for appointment of another competent lawyer as Special Public Prosecutor. They accused Respondent No.1 of initiating contempt proceedings only to harass and victimise them as they were agitating for a change of the Special Public Prosecutor. They denied making any defamatory statements against the judiciary. A compact disc (CD) was produced on 15.07.2003 which was a video recording of a press conference held on 15.05.2002 at Sri Ganganagar by the third Appellant and Sheopat Singh. The said press conference was also telecast on ETV (Rajasthan). The High Court viewed the CD after taking consent from both sides in the presence of the third Appellant and Sheopat Singh. The High Court directed a transcript of the video to be prepared and be kept on record.

4. The High Court framed three questions for consideration which are as follows:

(i) "Whether statement published in "Lok Sammat" dated 24.2.2001 published from Sri Ganganagar amounts to criminal contempt?

(ii) Whether editor's liability for whatever is published in the newspaper is absolute or he is not liable for faithful reproduction of the statement made by somebody else in the news reporting?

(iii) Whether it is proved beyond reasonable doubt on the basis of material on record that respondents No.2 to 6 did make the statements attributed to them respectively so as to hold them liable for contempt?"

5. In view of the disparaging remarks made by the Appellants against the judges of the Rajasthan High Court, the High Court held that the statement published in Lok Sammat on 24.02.2001 amounts to criminal contempt. The scathing remarks made by the Appellants have a tendency of creating a doubt in the minds of the public about the impartiality, integrity and fairness of the High Court in administering justice. According to the High Court, the scurrilous attack made by the Appellants against the judiciary lowers the authority of the Court.

6. In view of the unconditional apology tendered at the earliest point of time by Respondent No. 1, the Editor of Lok Sammat, the High Court discharged the notices against him in the contempt petition. The High Court answered the third point against the Appellants and held them guilty of contempt as the case was proved against them beyond reasonable doubt. The entire evidence on record was scrutinised carefully by the High Court to reach this conclusion. The press conference held by the third Appellant was highlighted by the High Court to conclude that the highly objectionable statements were, in fact, made by the Appellants on 23.02.2001. As the Appellants denied having made any statements against the judiciary in their reply to the contempt petition, the journalists demanded an explanation. The third Appellant stated that they stood by what was said on 23.02.2001. The High Court held the Appellants guilty of committing criminal contempt and sentenced them to simple imprisonment of two months and fine of Rs. 2000/- each.

7. We have heard Mr. Prashant Bhushan, Advocate for the Appellants. As Respondent No. 1 who was the petitioner in the contempt petition was unrepresented, we requested Ms. Aishwarya Bhati, Advocate to assist the Court to which she readily agreed. Apart from making oral submissions Ms. Bhati also gave a written note. Mr. Bhushan submitted that statements attributed to the Appellants only represent fair criticism which would not amount to contempt. According to him, the Appellants were in an agitated mood due to the murder of one of their leaders and the mishandling of the criminal case connected to that murder. Criticism of class bias and improper administration of justice cannot be considered to be contempt. He referred to a statement attributed to the fourth Appellant who alleged influence of money in the grant of anticipatory bail to the accused and explained that statement as having been made in a different context altogether. He stated that the influence of money was against the authorities and police force and not attributed to the judiciary. He also stated that the statement made by the third Appellant who named the judge who granted anticipatory bail and accused the judiciary of being partial to rich people does not tantamount to contempt. Strong reliance was placed on Indirect Tax Practitioners Association v. R. K. Jain, reported in (2010) 8 SCC 281 by Mr. Bhushan to contend that the Courts should not be sensitive to fair criticism. He

also stated that the power of punishing for contempt has to be exercised sparingly.

8. Ms. Aishwarya Bhati, the learned Amicus Curiae, submitted that the judgment of the High Court does not warrant any interference as the entire evidence was dealt with in detail. She submitted that all the relevant factors were taken into account by the High Court including the statements made by the Appellants which ex facie demonstrated contempt, the stand of the editor of the newspaper that they have scrupulously and correctly reported the statements in the newspaper and non denial of the Appellants addressing the public meeting at the Collectorate of Sri Ganganagar. She also submitted that the High Court took note of the press conference of the third Appellant and Sheopat Singh on 15.05.2002 and the affidavits of 5 journalists and one deed writer who were witness to the meeting on 23.02.2001. She placed reliance on a judgment of this Court reported in *Bal Kishan Giri v. State of Uttar Pradesh*, reported in (2014) 7 SCC 280 to contend that vituperative comments undermining the judiciary would amount to contempt. She also relied upon *Vijay Kumar Singh v. Union of India*, reported in (2014) 16 SCC 460 to contend that the apology was made only for the purpose of avoiding punishment and was not bona fide. To avoid prolixity, we are not referring to other judgments cited by the learned Amicus Curiae. She referred to the affidavits filed by the Appellants in this Court apologizing for the statements and even they do not demonstrate any genuine contrition. She submitted that an apology by the contemnors should be tendered at the earliest opportunity and it should be unconditional.

9. Section 2 (c) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines criminal contempt as follows:

"2. Definitions. In this Act, unless the context otherwise requires,

(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;"

10. Section 5 of the Act is as under:

"5. Fair criticism of judicial act not contempt.

"A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided."

11. Section 12 of the Act is as under:

"12. Punishment for contempt of court (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.-An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.-For the purpose of sub-sections (4) and (5),-

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

12. We are, in the present case, concerned with Section 2(c)(i) of the Act which

deals with scandalising or lowering the authority of the Court. It has been held by this Court that judges need not be protected and that they can take care of themselves. It is the right and interest of the public in the due administration of justice that have to be protected. See *Asharam M. Jain v. A. T. Gupta*, reported in (1983) 4 SCC 125. Vilification of judges would lead to the destruction of the system of administration of justice. The statements made by the Appellants are not only derogatory but also have the propensity to lower the authority of the Court. Accusing judges of corruption results in denigration of the institution which has an effect of lowering the confidence of the public in the system of administration of justice. A perusal of the allegations made by the Appellants cannot be termed as fair criticism on the merits of the case. The Appellants indulged in an assault on the integrity of the judges of the High Court by making baseless and unsubstantiated allegations. They are not entitled to seek shelter under Section 5 of the Act.

13. The oft-quoted passage from *Ambard v. Attorney-General for Trinidad and Tobago*, [1936] A.C. 322 is that "[j]ustice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men." The Privy Council in the same judgment held as follows: "The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune."

[Emphasis ours]

In *Indirect Tax Practitioners Association v. R.K. Jain* (supra) this Court held in paragraph 23 as follows:

"Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19 (1) (a) of the Constitution. Only when the criticism of judicial institution transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the court would use this power."

14. Every citizen has a fundamental right to speech, guaranteed under Article 19 of the Constitution of India. Contempt of Court is one of the restrictions on such right. We are conscious that the power under the Act has to be exercised sparingly and not in a routine manner. If there is a calculated effort to undermine the judiciary, the Courts will exercise their jurisdiction to punish the offender for committing contempt. We approve the findings recorded by the High Court that the Appellants have transgressed all decency by making serious allegations of corruption and bias against the High Court. The caustic comments made by the Appellants cannot, by any stretch of imagination, be termed as fair criticism. The statements made by the Appellants, accusing the judiciary of corruption lower

the authority of the Court. The Explanation to sub-Section 12 (1) of the Act provides that an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage, if the accused makes it bona fide. The stand taken by the Appellants in the contempt petition and the affidavit filed in this Court does not inspire any confidence that the apology is made bona fide. After a detailed consideration of the submissions made by both sides and the evidence on record, we are in agreement with the judgment of the High Court that the Appellants are guilty of committing contempt of Court. After considering the peculiar facts and circumstances of the case including the fact that the contemptuous statements were made in 2001, we modify the sentence to only payment of fine of Rs. 2,000/- each. The Appeal is dismissed with the said modification.

15. Criminal Appeal No. 464 of 2006, which concerns the same facts as reported in another newspaper, stands disposed of in terms of Criminal Appeal No.463 of 2006.

16. We record our appreciation for the assistance rendered by Ms. Aishwarya Bhati, Advocate as Amicus Curiae.