

(1980) 12 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No. 1639 of 1980

In Re: A Letter Dated 2nd/15th Sept. 1980 of Shrikant V. Bhat

Date of Decision : 03-12-1980

Acts Referred:

Constitution of India, 1950 — Article 143

Citation : (1981) 83 BOMLR 251

Hon'ble Judges : Masodkar, J;Aggarwal, J

Bench : Division Bench

Judgement

Masodkar, J.—By this Order, we propose to quell the storm raised in a tea cup and put an end to otherwise clearly an avoidable debate and controversy which is raised in our jurisdiction to punish persons for contempt of Court. Ordinarily, we do not make any speaking orders when there exists, as we will indicate, is the position of the present case, no ex facie case to issue process in contempt. However, as the matter has been debated before us and involves high officials as well as high principles and as particularly the learned Counsel requested, we propose to give our brief reasons.

2. The proceedings; are initiated upon the order of the then Chief Justice, which has a genesis in a letter having been received by him from Mr. Shrikant V. Bhat, a practising advocate of this Court, bringing to the notice of the Chief Justice a report of the speeches delivered by Sales-tax Commissioner Mr. K. Padmanabhaiah and the Chief Minister of the State, Mr. A. R. Antulay, on August 15, 1980. This matter was placed before us on November 20, 1980, and we permitted the learned Advocate-General of Maharashtra and the learned Government Pleader to intervene for the State. Eventually, we have heard the said advocate, Mr. Bhat, and also the intervening learned Advocate-General and the learned Government Pleader.

3. The speech, as is reported in the Marathi paper "Mumbai Sakal" under the title "All loopholes; in Sales-tax Act will be plugged-Assurance by Chief Minister Antulay" and its contents are said to be the graham of the charge because, as was contended before us by Mr. Bhat, the speech has a closer tendency to deride

the judiciary by citing instances of a wealthy tax evader being lightly punished while a poor fisherwoman being subjected to rigorous imprisonment. The learned Counsel submitted that the mischief is clearly within the ratio of the judgment of the Supreme Court in *E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar*, . As against this, the learned Advocate-General and the learned Government Pleader contended that there is not the slightest attempt to deride the judiciary in the entire speech and the mention of the cases was merely to highlight the loopholes in the sales-tax laws, and merely because it evoked laughter from the audience, it does not become a derisive speech of the speaker. Apart from the *ex facie* merit of the complaint in contempt being denied in this manner, a grievance is made by the learned Advocate-General that the procedure followed by the then Chief Justice, before ordering on October 28, 1980 that the matter should be placed before a Division Bench is not in keeping with the due propriety in such serious cases, particularly when the Head of the State, like the Chief Minister, was also involved. He particularly pointed out, after taking inspection of the papers, that the letter by the Advocate of this Court was received by the Chief Justice on September 15, 1980 one month after the speech and an endorsement was made by the Chief Justice on October 5, 1980, directing the Registrar to write to the Sales-Tax Commissioner. Thereafter the Chief Justice having perused a draft of the letter of this Registrar, a letter appears to have been written to the Sales Tax Commissioner whose reply was received on October 23, 1980. In the meanwhile, a letter from the Registrar also ensued on the direction of the Chief Justice that action would be taken if no reply was given. After the receipt of the reply, which explains in substance the context in which the speeches were made and the occasion, the learned Advocate-General pointed out on October 28, 1980 on the said reply the Chief Justice made the order, directing the Registrar to "place the matter before the concerned Division Bench for further action, It is then pointed out that right from that date till November 20, 1980, the matter was not placed before the Division Bench for any orders. It is suggested that the then Chief Justice retired on November 19, 1980, and then and then only the matter came to be placed before us. The learned Advocate-General has taken exception to this modality by pointing out that matters of contempt are of grave and serious nature and the procedure is entirely summary and all concerned should take expeditious steps, if at all there exists any *ex facie* case, to bring to the notice of the appropriate Court the matters in regard to contempt, otherwise the process itself is open to criticism that the matter is not being dealt with for the purpose of meeting the ends of public justice and it is nothing but a process in *terrorem*. The second serious comment advanced by the learned Advocate-General is that there is nothing on the record to indicate as to why the then Chief Justice did not think it fit to direct the office also to write to the Chief Minister of the State, whose speech forms part of the supposed charge of contempt and only he gave direction to issue a letter to the Sales-Tax Commissioner, Mr. Padmanabhaiah. He contends that if such a letter would have been written, probably the Chief Justice himself would have been satisfied that there existed no case for proceeding further.

4. We have given our anxious thought to all the problems and so far as the procedure and the modality followed in this matter are concerned, the learned Advocate-General is entitled to comment, as has been done by him, on our process in bringing the matter before the appropriate Court. It is not necessary to delineate all the dates with regard to the matter that was before the then Chief Justice. If the speech by itself per se was a contempt, we fail to see as to how any occasion arose for writing letters and only after reading the reply the occasion arose for issuing directions to place the matter before the Court and that too not giving any opportunity to the other speaker, who was the Chief Minister of the State. We think that it is settled practice that if there be in the view of any judicial official, including the Chief Justice, a cause for complaint, it has ordinarily to be placed before the Court dealing with contempt causes for being dealt with according to law and the practice of entering into correspondence with the so-called contemner can hardly subserve the ends of propriety.

5. When there are obvious delays and dilations in official procedures, it is equally open, to charge of unseemly modality as is being suggested herein. To avoid all this, we cannot but recall and restate the high authority and salutary warning that comes from the judgment of the Supreme Court in *In re*, under Article 143, Constitution of India In the matter of: Under Article 143 of the Constitution of India, , to the effect:

A Court should never forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.

(Emphasis added). (Indicated herein in italics-Ed.)

These high principles should always bear upon the considerations of all those who seek to initiate proceedings in contempt, and particularly when the same are being suo motu initiated.

6. Turning to the speech itself, even the paper which reported it has, treated it to be a complaint against the loopholes in the law regarding sales-tax and that is how it has been flashed for public consumption. Going through the entire reported speech, we find that the cases were referred only to highlight the loopholes and inequities in the process of administration of law and there is hardly any suggestion of imputing ill-motives or bad faith to the judicial administration. A public speaker is free to use meaningless hyperboles, superlative and metaphors as well as strong expressions which do not by themselves constitute any contempt, so as to drive home the point at issue.

Public speeches are to be appreciated in a free, fair and liberal way and a stray incident narrated cannot be appreciated apart from its context. There is no static formula of making a good public speech. After all, it is an art and only because, the report says that when the case of a millionaire who evaded the tax was mentioned by the speaker it evoked a laughter, it does not follow that that laughter was the evidence of any derision contained in the speech itself. The total effect of the speech has, to be taken into account and not merely stray sentences or utterances here and there de hon its context, and once we read the entire reported speech, we find it difficult to uphold even a prima jade charge of contempt. To some extent, reference to two cases may be treated as critical of the decisions of Courts in the matters of levying punishment, but all bona fide criticism of judgments is a permissible exercise and the law of contempt does not impinge upon it unless there is clear evidence of imputations to the judicial authority of bad faith or ulterior consideration.

7. Our pointed attention was drawn by Mr. Bhat to the Marathi word "Tamasha", as is available in the speech of the Chief Minister, for contending that this was nothing but an attempt to deride: the judiciary. The word "Tamasha" is merely a way of expression and is, clearly not intended to cast aspersions on the process of justice. By itself this Marathi word refers to and is understood as indicating any amusing performance or dramatic exposition. Metaphorically, it is used to indicate and carry meaning of ineffective enforcement of the laws. In the context, it has no sting of the kind that is being suggested by the learned Counsel.

8. All public criticisms having public good in view should, on the other hand, be a welcome process as the part of the public vigil of the work that the Court is expected to carry on. Constructive criticisms have clearly dual effects, one constantly reminding us that we are open to public scrutiny and the second to help better our own administration. Justice is not just a context-free exercise in fairness. It is a Wold venture into the basics of all that makes special essence. It is concerned with the society and people at large and when matters are in criminal jurisdiction and of passing of sentences the social implications thereof cannot be forgotten. The official appraisals of sentences by citizens, like all human actions, unless clearly in the realm of penal law, should be looked upon with initial promise and presumption of bona fides in favour of the critics and such a presumption should be greater in the case of those who occupy high responsible public offices. Surely, we cannot muffle the voice of criticism by recourse to penal provisions like those of contempt. Silencing persons in this manner, rather than helping the system, may stultify the same. That the criticism of sentences is a welcome measure not within the law of contempt is well-settled. (See *Andre Paul v. Attorney-General* AIR [1936] P.C. 141 and also *Reg. v. Comr. of Police of the Metropolis, Ex parte Blackburn* (No. 2) [1968] 2 W.L.R. 1204 , and the observations in AIR 1945 134 (Privy Council)

9. In a country governed by the Constitution, wherein fundamental guarantee of

freedom of speech and expression is enshrined, the law of contempt holds a very exceptional and sensitive field. Needless to say, whether we sit in Court or are out of it, our democratic system necessitates some sort of public accountability in all walks of life, including that in the institution of the Court. The concept of the Court in a free country is the concept supported by the popular sanction. Hardly, therefore, the Court can shy itself away from public gaze and public scrutiny. In fact, our doors and windows should always be open so as to admit passage of free ideas that subserve rather than subvert the dignity of administration of justice. Public criticism done in good faith for public good of judgments, and particularly of sentences imposed by Courts, cannot in our view be treated as contemptuous of the authority of the Court. -

10. We have no manner of doubt that reference to the cases and sentences in the two impugned speeches, one by the Sales-Tax Commissioner and the other by the Chief Minister of the State, are all in good faith and are intended to highlight the loopholes in the administration of law and justice.

11. With these observations, we direct that the proceedings be dropped. We hasten to record all our appreciation for the learned Counsel, Mr. Bhat, and also for the learned Advocate-General and the learned Government Pleader, who assisted us in coming to the above conclusion.