

(1987) 03 BOM CK 0015

In the Bombay High Court

Case No : Criminal Application No. 2156 of 1986

In Re: By Judicial Magistrate, First Class, Kirkee

Date of Decision : 11-03-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : (1987) 89 BOMLR 290

Hon'ble Judges : R.R. Jahagirdar, J;Mehta, J

Bench : Division Bench

Judgement

Jahagirdar, J.—A reference made by the learned Judicial Magistrate, First Class, Kirkee Cantonment, for taking action against respondents 1 and 2 in this petition under the Contempt of Courts Act, 1971 was taken note of by this Court and a rule was issued on the same. That is being heard as Criminal Application No. 2156 of 1986. The charge against respondents 1 and 2 is that they are the author and printer respectively of a pamphlet which was used by respondent 1 - hereinafter referred to as "the respondent" - in the elections relating to Pimpri Chinchwad Municipal Corporation held on 2nd of March, 1986. The pamphlet itself is dated 20th of February, 1986. In that pamphlet, which appealed to the voters to vote for the respondent, the respondent tried to explain a conviction which has been recorded against him under S. 500, Penal Code, in Criminal Case No. 2014 of 1967. While doing so, the respondent has stated that his opponent in the election, who actually later moved the learned Magistrate for making this reference, had filed the criminal complaint out of personal enmity. It was also stated that the complaint had been filed by the relatives of the respondent himself but at the instance of his opponent. Thereafter, it was stated in the pamphlet, which is in Marathi, that the criminal case was tried by a Magistrate who was residing in a bungalow owned by the relatives of the complainant. Fairly translated, the impugned words in the pamphlet are as follows :-

"The learned Magistrate before whom the criminal case was conducted was residing in a bungalow belonging to the close relatives of the complainant. The said Magistrate, without examining the evidence properly, imposed a fine of three months" simple imprisonment was directed. This was done by an order

dated 11th of November, 1968."

Proceeding further, it has also been stated in the said pamphlet that the said Magistrate later was the participant in a police party which was alleged to have been held in association with the smugglers. It has been further stated that that Magistrate went to America where he died.

2. Prima facie, there is a case for proceeding against the respondent, who is the author, and respondent 2, who is the printer of the said pamphlet. In our opinion, if it is suggested by published words that a particular judicial officer decided a case against a party because he was residing in the bungalow owned by the opposite party, it was prima facie amount to contempt of Court. This is for the reason that it will be lowering the authority of a Court over which that particular judicial officer is presiding. It would also amount to criminal contempt of Court because casting aspersions upon the presiding officer of a Court would deter him from fearlessly discharging his duties and thus it would interfere with the administration of justice.

3. Mr. Irani, the learned Advocate appearing for the respondent, has stated that the respondent had no intention of any kind to commit contempt of Court. What the respondent has done is merely to explain what had happened in a particular case. He has also taken a contention, which we are now required to examine in details, that a statement, allegedly scandalising or libelling a judicial officer who has retired or has otherwise ceased to be in office on the date the alleged libel or scandalising, cannot amount to contempt of Court within the meaning of the Contempt of Courts Act, 1971. He has invited our attention to the definition of "criminal contempt" contained in S. 2(c), Contempt of Courts Act, which is as follows :-

"criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, 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."

4. Mr. Irani says that the impugned does not scandalise or tend to scandalise, nor does it lower or tend to lower authority of any Court. In the instant case, impugned statement does not refer particular Court, but refers only to a Magistrate who was holding the post at the time. In a given case, even casting aspersions on a Magistrate, instead of on a Court, would amount to scandalising or lowering the authority of that Court because he is presiding over a particular Court. In the instant case, the Magistrate against whom allegations have been

made had not only to be a judicial officer but has in fact died. If this is so, says Mr. Irani, it cannot be said that the impugned statement amounts to contempt of Court within the meaning of S. 2(c)(i), Contempt of Courts Act. In our opinion, this contention is well founded. The learned Magistrate, who convicted the respondent in the year 1968, had, admittedly, ceased to be a member of the judiciary. As already mentioned above, in fact he has expired. He was, therefore, not sitting in any Court at the time when the impugned statement was made. The statement itself does not attribute any motive to the judiciary as such or to the Courts at Pune as a class. If this is so, one must hold that the impugned statement does not constitute contempt of Court within the meaning of sub-cl. (i) of S. 2(c), Contempt of Courts Act.

5. Normally, when statements questioning the honesty, integrity or the impartiality of the Judges are made, they come within the mischief of S. 2(c)(iii), Contempt of Courts Act. In the instant case, that is also doubtful, because unless such allegations are made against a person who is actually holding the judicial office, it cannot be said that the statement concerned interferes with or obstructs the administration of justice in any manner. The impugned statement before us cannot be said to interfere with or obstruct the administration of justice because by this statement the judicial officer concerned was not deterred or disabled or otherwise hampered in the discharge of his duties. On an analysis of the provisions of the Contempt of Court Act, therefore, we are inclined to uphold the contention of Mr. Irani. Mr. Irani is fortified in his submissions by two judgments on which he has naturally strongly relied.

6. The first one is *S. Gyan Singh Vohra, Advocate Vs. Ram Bheja Lal Malik, Advocate*, . In *Gyan Singh's* case the contemner before the Punjab High Court had made allegations about the lack of impartiality on the part of a Judge of the High Court who had ceased to be a Judge of the High Court when the said allegations were made. The Punjab High Court, after examining the concept of the contempt of Court and the source of the power of a Court for punishing for contempt of Court, held that a statement against a judicial officer who had ceased to be a judicial officer when the statement was made would not come within the mischief of the Contempt of Courts Act. The Punjab High Court noticed that total absence of any decided case on the question either in India or in England. Nevertheless, noticing the concept of the contempt of Court and the powers which were used by Courts for punishing for contempt of themselves, the Punjab High Court held that when a person has ceased to be a Judge on retirement or otherwise, it cannot be said that the libellous statement made against him regarding his judicial conduct or character amounts to disrespect to the Court or to the fountain head of justice or to the authority of sovereign State exercised through Courts of Law. As soon as a Judge lays down the reins of his office for whatever reasons, he ceases to hold any judicial position and he ceases to be a constituent of Courts of law. After ceasing to be a Judge, he cannot be said to be exercising judicial functions of the sovereign State. The Punjab High Court also looked at the same question from another point of view and held that

a statement, though a libellous one, made against a retired Judge would not amount to contempt of Court because that statement does not bring a Judge of the Court into contempt nor does it lower his authority as a Judge of the Court.

7. A similar question was also considered in *Registrar, Assam High Court v. Bharat Chandra* AIR 1962 gua 96, and was answered in the same manner. In fact, the learned Judges of the Assam High Court have referred to the judgment of the Punjab High Court.

8. In the result, it is not established that the respondents have committed contempt of Court punishable under the Contempt of Court Act. The Rule is, therefore, discharged with no order as to costs.

9. Rule discharged.