

(2008) 09 AHC CK 0086
In the Allahabad High Court

In Re: Smt. Sadhna Upadhyaya, Advocate

Date of Decision : 22-09-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 14, 15, 19

Citation : (2008) 3 UPLBEC 2113

Hon'ble Judges : Vikram Nath, J;V.K. Shukla, J;S.K. Jain, J;Janardan Sahai, J;A.P. Sahi, J

Bench : Full Bench

Judgement

Janardan Sahai, V.K. Shukla, A.P. Sahi, Vikram Nath and S.K. Jain, JJ.—This is an application for bail made by Smt. Sadhna Upadhyaya, a practising lawyer of this Court. Formerly she was also Secretary of the Bar Association of Allahabad High Court. The applicant has been charged for committing contempt of this Court by disrupting the proceedings of the Court. She was accordingly, directed to be taken into custody. The order dated 10.12.2007 makes mention of the facts which led to the passing of the order. The appellant challenged the order in appeal u/s 19 of the Contempt of Courts Act. The order passed by Justice Vinod Prasad on 10.12.2007 for taking the applicant into judicial custody and sending her to jail was kept in abeyance. This order was extended. However, a condition was imposed in the order of the Division Bench that "the appellant is restrained from appearing in the High Court except in the case in which she has been charged for criminal contempt".

2. Sub-section (4) of Section 14 of the Contempt of Courts Act reads as follows:

14. Proceeding where contempt is in the face of the Supreme Court or a High Court. (1)...

(2) ...

(3) ...

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this Section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

3. The applicant has filed this application that she be released on bail in view of the provisions of Sub-section (4) of Section 14 of the Contempt of Courts Act. The applicant, therefore, may be entitled to be enlarged on bail. However, there is another question which arises in this case and that is as to whether the condition, which has been imposed by the Division Bench in its order dated 10.12.2007 restraining the applicant's appearance in the High Court except in her contempt case, be continued or not.

4. We have heard Sri V.C. Mishra, learned Senior Advocate, who has appeared on behalf of the applicant. He submits that the only order which this Court can pass under Sub-section (4) of Section 14 of the Contempt of Courts Act, is to require the applicant to furnish a bond with or without surety and it cannot restrain the applicant from appearing in the High Court. It is also stated that the applicant is a practising lawyer and for a period of more than ten months the order of the Division Bench, which according to the applicant is without jurisdiction, has been continuing. This is causing irreparable loss to the applicant. To appreciate the contentions advanced by the learned Counsel for the applicant, it is necessary to refer to the facts of the case.

5. It appears that the applicant had argued a bail application before Justice Vinod Prasad, which was rejected by order dated 11.11.2007. According to the applicant, there were certain observations in the order dated 11.11.2007 regarding her conduct in having shrieked, which was not contained in the original order as was dictated in the Court. Subsequently, the applicant filed a bail application of another co-accused in the same criminal case, which was rejected by order dated 07.12.2007. The applicant, Smt. Sadhna Upadhyaya, who is present in Court submitted that she had made a request before the learned Judge for releasing the matter in view of the fact that on an earlier occasion, he had used the word shriek which was not contained in the original order as was dictated in the Court. On the date of incident, namely 10.12.2007, the applicant appeared in the Court and what happened on that day is contained in the order of Justice Vinod Prasad. The said order is being quoted below:

I sat in Court at 10.05 A.M. Smt. Sadhna Upadhyaya, an Advocate of this Court was sitting. She stood up when her matter was not even called for and she does not have any matter in the fresh cases, which is listed before me. As a matter of normal practice at 10.00 A.M. we take up the fresh matters. Smt. Sadhna Upadhyaya asked the Court that she had argued the matter on Friday

(7.12.2007), which must have been released. She was informed that the matter has already been decided and the bail has been rejected and order has already been signed and sent on that date. She then contended that unless she gets an answer to her question which had raised on Friday, she will not leave the podium and will not allow the Court to function. She contended that I may take cases but she will not leave the dais. When the Court asked her whether she will allow the Court to function or not, she stated that unless she gets her answer, she will not leave the podium. This act of Smt. Sadna Updhyaya in my humble opinion amounts jeopardising the proceedings of Court in a public view. On this occasion, I asked the reader to call the Court Officer in my Court, Smt. Sadhna Upadhyaya asked the other counsels to go and do their work. On this, the other counsels present told her that they have got cases before me as well.

She also stated that, if she will not get answer to her question, she will be taken out of the Court Room only by the Police and nobody else, she also stated that there should be a list of Counsel pasted who are to appear before this Court. Meanwhile after the above dictation, the Court Officer Sri Farman Raza appeared before me.

From the above narration of fact from 10.07 A.M. till 10.16 A.M. Smt. Sadhna Upadhyaya intentionally and deliberately jeopardised the proceedings of the Court. Her conduct amounts to a criminal contempt in public view.

Under Section 15 of the Contempt of Courts Act, this Court is entitled to take cognizance of a Criminal Contempt.

I take cognizance of the Criminal Contempt and I directed the Court Officer to arrest Smt. Sadhna Upadhyaya forthwith. He is directed to send her to jail. Smt. Sadhna is charged with the following charges:

That on 10.12.2007 from 10.07 A.M. till 10.16 A.M. she intentionally and deliberately without any reason whatsoever, disturbed the proceedings of my Court No. 47, not allowing the Court to function, and kept on standing at dais not allowing the other counsels to appear and plead their cases. This Act of Smt. Sadhna Upadhyaya amounts to Criminal Contempt under the Contempt of Courts Act and, therefore why she be not punished for committing Criminal contempt under the Contempt of Courts Act.

Smt. Sadhna Upadhyaya can file a reply to it within a week. This order be sent before the Contempt Bench dealing with a Criminal Contempt today. Court Officer is directed to send Smt. Sadhna Upadhyaya to jail and will produce her as is ordered further by the Contempt bench dealing with Criminal Contempt matter.

6. From the facts stated, it is to be noted that the date on which the incident occurred, was not the one on which there was any case of the applicant pending or listed before the Court, as she had argued the case much before that date. According to Smt. Sadhna Upadhyaya, she had gone to the Court of Justice Vinod Prasad only with a view to make a mention. The learned Judge has, however,

noted that Smt. Upadhyaya "intentionally and deliberately jeopardised the proceedings of the Court. Her conduct amounts to a Criminal contempt in public view." Learned Judge has further observed that "she intentionally and deliberately without any reason whatsoever, disturbed the proceedings of my Court No. 45, not allowing the Court to function, and kept on standing at the dais not allowing the other counsels to appear and plead their cases". As to what followed after this order was passed by the Learned Judge is stated in the subsequent order dated 11.12.2007, which is being quoted below:

On mention being made by Sri V.B. Singh, learned Senior Counsel, this application has been called by me today and that is how it has been placed before me.

This application without any prayer has been filed along with an affidavit of Smt. Sadhna Upadhyaya, who is personally not present before me.

This is an application has been filed in contempt matter No. 21 of 2007 connected with Contempt Appeal No. /07, Smt. Sadhna Upadhyaya v. State of U.P. Sri V.B. Singh, learned Senior Counsel submitted that in paragraph 1 and 2 of the deponent has shown deep sincere regret for the incident which had taken place in my Court and express her unconditional apology and vide para 3 it is mentioned that the apology may be accepted or the Hon"ble Court may pass suitable order whatever may deems fit and proper.

In this matter on 10.12.2007, I had drawn a criminal contempt proceeding against the applicant deponent Smt. Sadhna Upadhyaya and had sent the matter before the Bench dealing with criminal contempt. After the order was passed there was a total rukus and the window pains and glasses and the doors of many Courts were even got broken with shouting of filthy slogans. In the Court of some of the Hon"ble Judges even books were hurled and threre was shouting of slogans and vetuparization. Yesterdays incident has taken the dimensions where it is to be decided that whether the Court can function in an an atmosphere of terror, vetoprization, or scandalization or not and whether the Courts can upheld the dignity and majesty of law and of the Court in such an atmosphere.

In my humble view this aspect of the matter can be better adjudicated by a Division Bench, who is now seized of the matter, as I have been informed that a Division Bench has been constituted by the Hon"ble The Chief Justice to look into the matter of criminal contempt and I have been also informed that an appeal against my order dated 10.12.2007 has also been filed before a Division Bench. Under the High Court Rules a criminal contempt and appeal against an order passed by a single judge is cognizable by a Division Bench, which is seized of the matter and has taken cognizance. Sitting singly, I cannot have a jurisdiction to entertain the alleged apology, which has to be pleaded before the appropriate Division Bench.

I think the applicant should approach the Division Bench concerned for redressal of her grievance.

This applicant is disposed off with the aforesaid observation.

7. The Division Bench, in the appeal u/s 19 of the Contempt of Courts Act found that this Court would have to address itself to larger issues, including the power to control the functioning of its own Courts and any interference in the free-flow of justice to be administered by this Court. Reliance was placed by the Division Bench on an order of the Hon'ble Apex Court dated 27.10.2006 passed in Criminal Appeal No. 63 of 2006, Mahipal Singh Rana v. State of U.P. and Ors. Considering the import and gravity of the prima facie misconduct of the contemner, the Division Bench restrained the applicant from appearing in the High Court except in the case in which she had been charged for criminal contempt.

8. It appears that against both the orders dated 10.12.2007 and 11.12.2007 passed by Justice Vinod passed, as well as by the Division Bench, respectively, including the order restraining the applicant from appearing in the High Court except in her own personal cases, the applicant had filed Special Leave Petitions. Those petitions were dismissed as withdrawn by the Hon'ble Apex Court vide order 11.02.2008. Sri V.C. Misra, learned Senior Advocate, submitted that he wants to address the Court further on the issue of debarment after studying the matter. In the circumstances, the matter has to be adjourned on such request.

9. The question, as to whether a practising lawyer can be restrained from appearing in a particular Court, has been considered in certain decisions, to which we will now make reference. The five Judges Bench of Jharkhand High Court on its own motion v. K.K. Jha and Anr. AIR 2007 J&K 67 (para 84) held that such an order restraining a practising lawyer from appearing in the Court can be passed. In support of the said decision, the Five Judges Bench relied upon the decision of Hon'ble Apex Court in Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, Relevant paragraph 84 of the decision of Jharkhand High Court is quoted below:

84. In view of the above suggestion given by the Supreme Court, this Court feels that it would be appropriate to direct the Counsel contemner Mr. K.K. Jha "Kamal" not to appear before any of the Courts under this jurisdiction till he purges himself of the contempt. This order does not mean that his licence is revoked or he has been debarred from complete practice as an advocate, as this sort of order can be passed only by the Bar Council after conducting inquiry. Therefore, we make it clear that this restriction would only be confined to his appearance before the Courts under this jurisdiction. It would be open to him to have a chamber practice. Consequently, we are constrained to pass this order in order to see that this Court as well as the Subordinate Courts would not have to face this sort of situation causing mental torture at the hands of the contemner Counsel in future.

10. The march of events, the propensity of the incident, the submissions in this regard and the approach of the contemner as well as her Counsel towards the

entire incident have been narrated in detail in the order of this Full Bench dated 22.08.2008 reported in 2008 (7) ADJ 336.

11. In view of the facts and circumstances of the case, we are of the view that such an order as was passed by the Division Bench be also passed on this contempt petition subject to any further order that may be passed after hearing the Counsel for the applicant. In the circumstances, we release the applicant on bail on her furnishing personal bond of Rs. 100/- (Rupees Hundred only) before the Registrar General of this Court giving undertaking to this effect that she will be present in Court on the date fixed in the contempt case. We also restrain the applicant, until further orders, from appearing in the High Court except in her own contempt case.

12. We however, find that the submissions of Sri V.C. Mishra, learned Senior Advocate to the effect that the order restraining the contemner from practising in the Court for an indefinite period of time i.e. about 10 months pending proceedings is too harsh merits consideration. Every litigant has a right to get his/her case disposed of at the earliest as well as the applicant also, who is a practising lawyer and a member of the Bar. In these circumstances, we are of the view that this contempt be disposed of expeditiously, therefore, we direct this case to be listed on 13th of October, 2008. The Contemner may put in her defence by the date fixed and file an affidavit to that effect.