

(1996) 05 AHC CK 0131

In the Allahabad High Court

Case No : Contempt Appeal No. 622 of 1994 & Criminal Contempt Appeal No. 622 of 1994

K.L. Sharma

APPELLANT

Vs

K.G. Rastogi

RESPONDENT

Date of Decision : 15-05-1996

Acts Referred:

Constitution of India, 1950 — Article 235
Contempt of Courts Act, 1971 — Section 12, 19, 20

Citation : (1997) CriLJ 2647

Hon'ble Judges : U.P. Singh, J;R. Dayal, J

Bench : Division Bench

Advocate : S.N. Verma and Navin Sinha, for the Appellant; M.N. Sharma, D.G.A., for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—This appeal has been filed u/s 19 of the Contempt of Courts Act, 1971, against the judgment and order dated 18-4-1994, passed by the learned Single Judge, whereby he held that prima facie criminal contempt has been made out.

We have heard Sri S.N. Verma, Senior Advocate for the appellant and Sri M.N. Sharma for the opposite party.

2. From the record of the case, it appears, that a retired District Judge was re-employed on yearly basis by the Government of U.P. in consultation with the High Court, as a Judge of the Family Court at Lucknow. In December, 1989 a new Government came into officer and took a policy decision to terminate all re-employments in the State. In pursuance of this uniform policy decision, the State Government also terminated the re-employment of the opposite party.

3. The appellant was then working as the Judicial Secretary and Legal Remembrancer to the Government. The opposite party filed a Writ Petition in the

High Court, challenging the termination order dated 19-12-1989 and obtained an order of stay on 17-5-1990. He assumed the office of the Principal Judge, Family Court of Lucknow on 18th May, 1990. In July, 1990 he filed an application in this Court, which was registered as Civil Contempt Case No. 508 of 1990, u/s 12 of the Contempt of Courts Act, 1971, for initiating Civil Contempt, on the ground that the appellant had committed disobedience of the stay order by not paying the salary and by not restoring him all the powers and amenities.

4. The learned Single Judge issued notice on 24-7-1990 to the appellant to show cause why on the averments made in the said Contempt Petition, an action for contempt be not drawn against him. In obedience to this show cause notice, the appellant submitted a counter affidavit on 6th of August, 1990, denying the allegations of disobedience and non-compliance of the interim mandamus dated 17th May, 1990. The appellant pleaded that the salary, powers and amenities had been restored to the opposite party. After hearing arguments on both sides, the learned Single Judge reserved the judgment on 14th August, 1990. He, however, delivered the impugned judgment and order only on 18th April, 1994.

5. Mr. S.N. Verma, the learned Advocate of the appellant contended that the finding of prima facie contempt against the appellant was unjustified and unsustainable in law and on facts. It was submitted that the statement made by the appellant in paragraph 12 of the counter affidavit filed in the Writ Petition No. 12782 of 1990 was neither a part of the averments of the Civil Contempt Application, nor it amounted to criminal contempt, as it was purely an opinion or an expression of a view, which may be right or wrong. It was further submitted that a single word could not have been excluded or taken out from its context or the sentence in which it was used by the appellant. He clarified that the use of a word may be wrong, inappropriate or defective, but it does not mean either disrespect or contempt.

6. On perusal of the counter affidavit filed by the appellant on August 6, 1990 the learned Single Judge found the word "vanity" used in the last portion of paragraph 18 of the counter-affidavit and ascertained the meaning of the word "vanity" by extensively referring to several dictionaries.

7. We have given careful thought and consideration to the view of the learned Single Judge. but we are unable to subscribe to his view. There is no doubt that there are thousands of words in every language, which carry not only good meanings but also had meanings. The variety of meanings shows the richness of the language and its usefulness to the human beings when it serves. We do not consider it necessary to quote examples and cite words carrying different meanings by referring to dictionaries. We may point out that the correct meaning of the word is derived from its use in the context and not by excluding it from the context. The setting of the word in the sentence or the statement exhibits, its true colour, signifying the intention of the maker. Every Statute attempts to define the words used in it, in order to specify its meaning for the purpose of the Act. but the definition clause in the Act itself makes an exception in the words.

8. The principle of interpretation, therefore, is that the meaning of the word which is signified by the context in which it has been used, will be alone acceptable. On the basis of this principle, we now proceed to examine the material evidence on record. The last portion of paragraph 18 of the counter affidavit dated 6th of August, 1990, filed by the appellant in answer to the show cause notice dated 24th July, 1990, in Civil Contempt Application No. 508 of 1990 reads as follows :

The deponent has got utmost respect and regard for this Hon"ble Court. In fact, the deponent has always made, consulted and all out efforts to maintain the dignity and vanity of this Hon"ble Court as well as the judiciary as a whole.

From a bare reading of this statement, the intention of the maker becomes crystal clear that the word "vanity" has been used in good sense. As the saying goes, a person is known by the company it keeps; the meaning of the word is also known by the company of other words with which it is ground. The context makes the meaning further transparent. No extra enthusiastic effort or exercise is at all called for to extricate the word "vanity" from the sentence with a view to attribute a different meaning on the strength of variations contained in several dictionaries. We are of the definite view that the word "vanity" used by the appellant in the statement referred to above, does not show any disrespect to the Court and cannot be treated to be contemptuous in any manner, whatsoever. Therefore, no case for contempt is made out against the appellant.

9. Assuming for the sake of argument that the word vanity was wrongly used, we can not hold that the appellant has. therefore committed contempt of this Court. Improper or wrong use of the word means only improper or wrong use and no more. The mistake is always excusable because nobody can be perfect in the use of the language. Wrong use of the word cannot be identified with contempt. The element of intention is a must to contain contempt, which we do not find in the present case.

10. Now we practiced to examine the other basis in which the learned Single Judge has founded a prima facie contempt against the appellant. He has referred to the statement of the appellant made in paragraph 22 of the counter affidavit filed by him in reply to the averments made in Writ Petition No. 12782 of 1990. filed by the opposite party to challenge his termination order dated 19-12-1989. He has not specifically reproduced any portion of the statement. What the impugned judgment indicates is that the appellant was contemptuous and disobedient in expressing his views that the administrative recommendation of the Court was placed before the State Government, which decided to wail for the judicial verdict and that the proper authority to accept the same was the State Government. The learned Single Judge has seriously objected to this view of the appellant because the appellant was a Judicial Officer, bound to obey and carry out every direction of the High Court. whether passed by the Court on the judicial side or on the administrative side. But. we find on perusal of the counter affidavit that the appellant has nowhere challenged the authority and status of

the High Court. As a Judicial Officer, the appellant was under the administrative control of the High Court in the matter of his service. The appellant had been posted as Judicial Secretary to the State Government with the consent of the High Court. The appellant was as such discharging the functions which were assigned to him by the State Government. He could not obviously, legally exceed his powers and usurp the authority of the Government. It was open to the High Court to have withdrawn him from that post. The administrative recommendation did not relate to service of the appellant which he was bound to obey. But it related to the opposite party for acceptance of the State Government which had passed the impugned termination order and was competent, under the Family Courts Act, to take such a decision. The appellant to whom the letter was communicated by the Joint Registrar, could not legally take a decision thereon and he performed his duties by placing it before the Government. The appellant cannot be blamed as disrespectful or contemptuous to the High Court.

11. A Secretary to the Government cannot be said to be the Government and cannot exercise the powers of the Government unless the law has permitted delegation of powers vested in the State Government and, as a matter of fact, the Government delegates the powers to any of the officers including the Secretary. But, in the present case, there is not even any suggestion that the appellant had been delegated the powers of the State Government. Legally speaking, the State Government had not been permitted by the Family Courts Act to delegate its powers of appointment, termination etc. in respect of the Judge, Family Court. Therefore, the appellant acting as Judicial Secretary at the time, could not himself take a decision on the recommendation of the Administrative Committee and he was legally and factually correct in placing it before the State Government. He cannot, therefore, be held responsible for the decision of the Government. It cannot be inferred that the appellant ignored the letter and lowered the authority of the High Court.

12. The learned Single Judge has extensively quoted and relied upon the judgment of the Hon'ble Supreme Court, rendered in the case of *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, . We have carefully gone through this judgment but regret our inability to agree with the conclusion drawn by the learned Single Judge. Mr. Baradakanta Mishra was ordered by the High Court to be reverted to the post of Additional District Magistrate (Judicial) from the post of Additional District and Sessions Judge, by exercise of powers under Article 235 of the Constitution, as Mr. Mishra was a Judicial Officer. The State Government was not willing to release him and, it appears, that Mr. Mishra was also not willing to be relieved and he was taking excuse on the ground that the Government was not relieving him. The High Court had placed Mr. Mishra under suspension and ordered for inquiry against him. Thereupon, Mr. Mishra filed a writ petition against the High Court, Orissa, challenging the authority of the High Court. He also made adverse and disparaging remarks against the Judges of the High Court, functioning on the administrative side. The hon'ble Supreme Court took exception to this conduct of

Mr. Mishra as a Judicial Officer and found him guilty of contempt for making adverse remarks against the High Court.

13. In the present case, the facts are altogether different from the aforesaid case of Mr. Misra. The appellant had neither challenged the authority of the High Court, nor made any adverse comments or remarks or imputations against the Hon'ble Judges of the High Court or the Administrative Committee. The recommendation of the Committee did not pertain to the appellant, inasmuch as, it did not relate to his posting or reversion or any other service matter, which he was bound to obey and comply under Article 235 of the Constitution of India. What the learned Single Judge had objected to, is the opinion or the view expressed by the appellant that the Administrative recommendation is not a judicial verdict, but the appellant has not made any comment, whatsoever, thereupon. In our opinion, the learned Single Judge is not justified to assume without any material or basis on record that the appellant treated the High Court disrespectfully and contemptuously, by expressing that view and by failing to comply with the letter of the High Court. We cannot draw such inference against the appellant.

14. We may refer to an important decision of the Hon'ble Supreme Court, rendered in the case of State of Bihar and Others Vs. Kripalu Shankar and Others, , where the question of the views and opinion expressed by the officers working in the Government was considered by the Hon'ble Supreme Court with a view to find out whether the views and opinion expressed by the officer will amount to contempt of Court. The Hon'ble Supreme Court expressed the view on this question at page 1559 of AIR :

It would be dangerous to found an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavoury notes, on a perusal of the notes file by the court after getting them summoned. This would impair the independent functioning of the civil service .essential to democracy. This would cause impediments in the fearless expression of opinion by the officers of the Government. The nothings on files differ from officer to officer. It may well be that the notes made by a particular officer, in some cases, technically speaking is in disobedience of an order of the court or may be in violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the nothings in a file for the purpose of initiating contempt, in our view, therefore, would be to put the functioning of the government out of gear. We must guard against being over-sensitive, when we come across objectionable nothings made by officers, sometimes out of inexperience, sometimes out of over-zealousness and sometimes out of ignorance of the nuance of the question of law involved.

15. What we need to emphasize in the light of the observations of the Hon'ble Supreme Court is that an honest and blank view or opinion expressed by an officer without making any adverse comment or imputing any motive behind the judicial or administrative order of the Court can not be the foundation of any

contempt of Court. In the present case the views of the appellant, which have been objected to by the learned Single Judge, are honest and blank views without any adverse comment against the High Court or the Hon'ble Judges of the Administrative Committee. We also find the views perfectly correct in the eyes of law. The administrative recommendation is not, of course, judicial verdict, though it may well be binding in certain matters and circumstances, which we have already discussed. High Court is, of course, only one institution undeniably, but it has been conferred not only adjudicatory powers but also financial and administrative powers. The exercise of these powers is done by the High Court in the manner and subject to the parameters prescribed by law. The judicial verdict is rendered by the High Court after adjudication of the dispute between two sets of parties. Therefore, it is different from an administrative recommendation made without judicial determination. That is why the administrative decisions are challenged in the same High Court on its judicial side, where judicial determination is made after hearing the parties. In the present case, the opposite party challenged the decision of the Government in a writ petition and an administrative recommendation pertaining to the same issue was received from the High Court and it was not at all objectionable to say that a judicial verdict be awaited, and we do not see any reason how it would constitute contempt. By this impugned judgment, the present and future incumbents of the office of Judicial Secretary to the Government and all the Judicial Officers, working on deputation with the Government and all other statutory bodies have been directed to follow the administrative orders of the High Court in all matters, failing which, they shall be punished for contempt of Court.

16. We do not think that such a wide blanket direction will be found, on deeper examination, to be in conformity with all the laws in force and applicable to all kinds of orders and in all circumstances. We cannot undertake such an exercise in the present case. In our opinion, the opinion expressed by the appellant and the views expressed by him, could not be treated as contemptuous. We, therefore, set aside the finding of the criminal contempt recorded against the appellant and the direction issued to all the Judicial Officers on deputation.

17. Mr. S.N. Verma, learned counsel for the appellant further argued that an action for criminal contempt is barred by limitation and, therefore, the impugned order, directing the Chief Justice to take further action against the appellant, cannot be sustained in law and is liable to be quashed. On perusal of the record, we find that the views were expressed by the appellant in the counter affidavit on 6th August, 1990 and the application for contempt was moved by the opposite party u/s 12 of the Contempt of Courts Act, 1971. On 24th July, 1991 The learned Single Judge heard the matter and reserved the judgment on 22nd of August, 1991, but then he delivered the judgment on 18th of April, 1994, that is, after expiry of two years eight months. The opposite party had complained of civil contempt for disobedience and non-compliance of the interim mandamus dated 17th May, 1990. The learned Single Judge did not find any non-compliance of the interim mandamus and no civil contempt was found against the appellant.

Therefore, the application for civil contempt should have been dismissed and notice for civil contempt should have been discharged, but the learned Single Judge did not pass the requisite orders. Instead, without issuing notice of show cause for the criminal contempt, the learned Judge recorded a finding of prima facie contempt and directed action to be taken against the appellant.

18. Section 20 of the Contempt of Courts Act reads as follows:

Section 20. Limitation for actions for contempt -- No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

19. Obviously, the impugned order dated 18th April, 1994 was barred by limitation and is not saved in any manner and on any consideration. An action for criminal contempt could not be taken after expiry of one year from the date of the alleged contempt. In this case, even notice to show cause against the alleged criminal contempt was not issued by the learned Single Judge at any time, during the long period of four years from the date of alleged criminal contempt. Therefore, the order dated 18th of April, 1994, directing action to be taken for criminal contempt against the appellant, is clearly barred by limitation and is liable to be set aside.

20. For these reasons, the appeal is allowed and the impugned judgment and orders and directions dated 18th of April, 1994, rendered in civil Contempt Case No. 508 of 1990 are quashed.