
(2000) 01 GAU CK 0030
In the Gauhati High Court
Case No : Contempt Appeal (C) No. 4 of 1999

Liakat Ali

APPELLANT

Vs

Kamala Keot

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 19(1)

Citation : (2000) 1 GLT 405

Hon'ble Judges : N.C. Jain, J; D. Biswas, J

Bench : Division Bench

Advocate : P.K. Goswami, R. Gogoi, D.R. Gogoi and A.J. Sarmah, for the Appellant; D.K. Talukdar, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.

This appeal u/s 19(1) of the Contempt of Courts Act, 1971 has been directed against the Judgment and Order dated 6.5.99 passed in Civil Original Contempt Petition No. 515/94 whereby the learned Single Judge held the Appellant, a Judicial Officer, guilty of contempt of Court and sentenced him to undergo simple imprisonment for a period of one month and to pay a fine of Rs. 2,000/-, in default, to undergo detention for one month. The contempt petition was initiated at the instance of Shri Kamala Keot, the Respondent herein, who was ordered to be detained in civil prison for a period of two months by Shri Liakat Ali, Munsiff No. 1 at Mangaldoi, the Appellant before us.

2. We have heard Shri P.K. Goswami, the learned Senior Counsel for the Appellant and also heard Mr. D.K. Talukdar, the learned senior counsel appointed as the amicus curiae to assist the Court in the matter. None appeared for the Respondents despite service.

3. The facts which eventually culminated in the contempt petition are that on

14.10.93 the learned Munsiff No. 1 at Mangaldoi, the Appellant, passed an order in Miscellaneous Judicial case No. 12/92 directing that Kamala Keot, the Respondent, be detained in civil prison for two months and by the same order his properties were also directed to be attached. This order was passed in an execution proceeding. Accordingly, Kamala Keot was arrested on 21.9.94 and sent to prison. The aforesaid order passed by the learned Munsiff was challenged before this Court in Civil Revision No. 478/94. The Court was then in vacation. The learned Single Judge by order dated 7.10.94 directed that the Petitioner be released immediately on execution of PR. Bond of Rs. 1,000/-. The certified copy of the aforesaid order dated 7.10.94 was produced before the concerned Superintendent of Jail, Shri Bakul Dutta. The Jailor did not release the Petitioner and insisted for an order of release from the Munsiff who had initially directed imprisonment of the Respondent. On advice by the learned Counsel Shri Abdul Wahid, the wife of the Petitioner Smt. Bhageswari Keot came to Jalukbari, Guwahati and met the Munsiff in his residence. Smt. Keot, since deceased, accompanied by Shri Sebaruddin Ahmed, Advocate met the Appellant (learned Munsiff) and submitted certified copy of the High Court's order and the PR Board. The learned Munsiff instead of passing any order issued a note in a piece of paper addressed to the office asking for the relevant case record to be produced on 17.10.94. Shri Sabaruddin Ahmed, advocate and Shri Iftikar Hussain, Bench Assistant met the Appellant on 17.10.94 in his residence at Jalukbari, Guwahati. The Bench Assistant carried with him necessary papers relating to the detention of the Petitioner, but the contemner No. 1 instead of passing any order directed them to meet him in his Court chamber on 20.10.94. Accordingly, the wife of the Petitioner, her advocates, namely Shri A. Wahid and Shri S. Ahmed met him in his chamber on 20.10.94 and submitted a copy of the order of the High Court, the PR Bond and the application dated 17.10.94. The learned Munsiff (contemner No. 1) declined to pass any order on the plea that he cannot pass any order as he was on vacation and told them that he would be able to pass necessary orders only on 4.11.94, the day when the civil Court reopens. Thus, according to the Petitioner, the learned Munsiff, contemner No. 1, has wilfully disobeyed the High Court's order passed on 7.10.94.

4. The Respondent/contemner in his affidavit denied the allegations levelled against him. According to him, neither the Petitioner nor any advocate visited his residence, at Jalukbari on 13.10.94. He further submitted that he was availing the 2nd half of the vacation i.e. with effect from 19.10.94 to 3.11.94 and, as such, he was not competent to pass any order during that period. During the first half he had attended his office on 4th, 5th, 6th, 7th, 10th and 17th October, 1994 to perform administrative work. The dates in between i.e. 8th, 9th, 11th, 12th, 13th, 14th and 16th were gazetted holidays and the Appellant was in his residence at Jalukbari, Guwahati. On 17.10.94, the Appellant was in his office and, as such, the statement that the Petitioner's wife along with others met him on that day in his residence at Jalukbari, Guwahati is false. Sri Iftikar Hussain, the Bench Assistant, was availing the vacation from 15th October to 24th

October, 1994. So, the allegation that the Bench Assistant had accompanied the Petitioner's wife and others to his residence during the period when he was availing the vacation is also false. On 20.10.94, it is averred, he was not in his office as he was on vacation during that period.

5. Shri P.K. Goswami, the learned senior counsel appearing for the Appellant/contemner submitted that the allegations levelled against the Appellant are belied by the documents available on record. According to him, the statement of witnesses read with the affidavits, specially of Sebaruddin Ahmed, advocate, would show that neither on 13th nor on 17th the Petitioner's wife and others had any possibility of meeting the Appellant/contemner. According to the learned Counsel, the statement of the Bench Assistant who was not on duty on 17.10.94 would show that the story of meeting the Appellant/contemner on 17.10.94 in his residence at Jalukbari, Guwahati is totally false. The learned Counsel further argued that in a contempt proceeding, the evidence must be clinching enough to establish that the contemner has wilfully disobeyed the order of the Court. The learned Counsel also placed reliance on a number of decision of the Apex Court in support of his contention.

6. Before we proceed further, it would be of convenience to have a look into the decisions relied upon on behalf of the contemner. In *Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others*, the Supreme Court has observed that the proceedings in the contempt are quasi criminal in nature, that the law of contempt has to be strictly interpreted and that the requirements of that law must be strictly complied with before any person is convicted for contempt. In *Bunna Prasad and Others Vs. The State of U.P. and Another*, the Supreme Court has held that a High Court should be chary of finding a judicial officer guilty of contempt of Court for disobeying its orders unless there is unimpeachable evidence that the judicial officer had knowledge of the order of the High Court.

7. Keeping in mind the above decisions of the Supreme Court, it has to be seen whether the allegations levelled against the Appellant/contemner have been substantiated by the evidence--oral and documentary. At the first instance, we would like to deal with the allegations that on 13.10.1994 the Petitioner's wife accompanied by Shri Sabaruddin Ahmed met the Appellant in his residence at Jalukbari, Guwahati and produced the copy of the order and the PR Bond. It is needless to reiterate that the Appellant/contemner had denied that they came and met him on that day.

8. It would be pertinent to mention here that the learned District and Sessions Judge, Mangaldoi was directed by this Court vide order dated 6.1.99 to record the statement of Shri Sabaruddin Ahmed, Shri Abdul Wahid, learned advocates and Shri Iftikar Hussain, Bench Clerk, with opportunity to the Appellant/contemner to cross-examine them. The statements were accordingly recorded by the learned District and Sessions Judge, Mangaldoi.

9. It would appear from the affidavit (Annexure-6) of Shri Sabaruddin Ahmed,

learned advocate that he had specifically made the statement that being advised by his Senior Counsel Shri Abdul Wahid, he came to Jalukbari along with the wife of the Petitioner on 13.10.94 and met the Appellant in his residence. He also placed the certified copy of the order of the Hon'ble High Court and the PR Bond signed by Kamala Keot. He also requested the Appellant to pass necessary orders for release of Kamala Keot. But the Appellant returned the papers without passing any order and gave a "note" addressed to his office directing them to send records to his residence on 17.10.1994. The said "note" (slip) was handed over to the Serrestadar Shri K. Deka.

10. But in his evidence recorded by the learned District Judge (Annexure-9), he has virtually denounced his affidavit. According to him, it was a day during Puja vacation when he met the Appellant at his residence. The Appellant examined the papers and said that he would do the needful in his office in Court. He was not present when the Senior Counsel Mr. Wahid moved the matter in Court. He also could not say the day when he along with the wife of the Petitioner visited the residence of the Munsiff.

11. It would appear from his statement that this witness does not mention of any date of meeting with the Munsiff at his residence. He also does not mention of any "slip" given by the Munsiff requiring his office to produce the papers. Therefore, the statement of this witness does not go to establish that he along with the wife of the Petitioner met the Munsiff on 13.10.94 in his residence. Moreover, the slip which he allegedly handed over to the Sheristadar as per his statement in the affidavit is also not brought on record to show that the Appellant was really made aware of the High Court's order dated 7.10.94. The statement made before the learned District Judge widely differs with that made in the affidavit. The omission is so wide that it makes it difficult to accept his statement as corroborative to the allegations made in the petition.

12. The allegation that on 17.10.94 they again met the Munsiff along with the wife of the Petitioner and Shri Iftikar Hussain, Bench Assistant, with the official record is also not supported by him in his evidence. This witness is completely silent on this point. Witness No. 3, Shri Iftikar Hussain, Bench Assistant in his statement (Annexure-10) categorically said that he was availing vacation upto 24th October, 1994 and he did not go to the residence of the Appellant at Jalukbari, Guwahati with Shri Sabaruddin Ahmed, learned advocate and any client. Shri Sabaruddin Ahmed, learned Advocate is also completely silent about his visit on 17.10.94. This omission on his part read with the statement of Shri Iftikar Hussain belies the allegation that on 17.10.94, the Petitioner's wife accompanied by Shri Sabaruddin Ahmed, learned advocate and Shri Iftikar Hussain, Bench Assistant visited the residence of the Munsiff. The statements of the witness have been recorded by the District Judge on oath. Besides, from Annexure-4, the copy of the attendance register, it appears that on 17.10.94, the Appellant was in his office at Mangaldoi. His signature in the attendance register on 17.10.94 shows his presence in office and this alternately creates genuine

doubt if on that day the Petitioner's wife and others could at all meet him in his residence at Jalukbari. The aberrations arising out of the omissions and contradictions create a genuine doubt about the veracity of the allegations made.

13. Mr. Wahid, learned advocate, in his statement (Annexure-8) recorded on oath by the District Judge stated that on 20.10.1994 he along with Mr. Sabaruddin Ahmed met the Munsiff in his chamber at Mangaldoi and placed the order of the High Court along with the PR Bond and the application dated 17.10.94. According to him, the learned Munsiff, who was working in his chamber told him that he could not accept the documents and refused to pass any order. But Mr. Sabaruddin Ahmed, in his statement, did not say that he accompanied Mr. Wahid, learned advocate and met the Munsiff. The statement of Mr. Abdul Wahid, therefore, goes unsupported by Mr. Sabaruddin Ahmed who appears to be most important witness in this proceeding. It would, therefore, be difficult on the part of this Court to conclude on the basis of solitary statement of Mr. Abdul Wahid that the Appellant refused to receive the papers on 20.10.1994 and to pass any order.

14. From the order dated 3rd October, 1994 (Annexure-3), it would appear that the learned District Judge allowed the Appellant to avail Puja Vacation from 19.10.94 to 3.11.94. The learned District Judge also ordered that in case the Munsiff No. 2 does not join by that time, the Sheristadar will remain in-charge of the office during the first half of the vacation. This order (Annexure-3) shows that the Appellant was on vacation during the period between 19.10.94 to 3.11.94 and, therefore, he had no reason to be present in his Court on 20.10.94 to discharge judicial functions. This is undoubtedly an important feature which fails to inspire us to accept the evidence as unimpeachable.

15. Besides, it has been alleged that an application was also submitted before the learned Munsiff on 17.10.94 in his residence at Jalukbari. But the official seal indicates that it was received by the office on 4.11.1994 when the Appellant passed the order of release. No satisfactory explanation is available as to why the petition dated 17.10.94 was not filed either before the Sheristadar or before the learned Munsiff present in his Court. Mr. Sabaruddin Ahmed, learned Counsel, did not say in his evidence that any such application was submitted before the Appellant in his residence on 17.10.1994. This otherwise indicates that this application (Annexure-1) was not submitted on 17.10.94 as alleged. The other important features of the case are that on 4.11.1994, after the Appellant had passed the order of release, another application (Annexure-2) was submitted making the aforesaid allegations against the Court. The learned Munsiff on that very day, on receipt of the application, passed the following order:

4.11.94

Order Misc. (J) 12/92

Seen the copy of the order dated 7.10.94 passed by the Hon'ble High Court whereby opposite party Kamala Keot @ Deka is released on P.R. Bond of Rs.

1000/-.

Perused the P.R. Bond and petition No. 2058/93 of said opposite party. The P.R. Bond is numbered by way of petition 2057/94.

Accordingly said P.R. Bond of the defence Kamala Keot is accepted.

Let accordingly Superintendent of District Jail, Mangaldoi is directed to release the said detenu forthwith.

Let issue release order to said authority forthwith.

4.11.94

Later on.

Seen petition No. 2053/94 filed by Smti Bhogeswari Deka W/o Kamala Keot praying release of the Kamala Keot. The release order is already passed on petition No. 2058/94 filed by Kamala Keot hence this petition is not necessary.

It appears from petition of Smt Bhogeswari Deka that fact stated in the petition is entirely false. The order of release passed by Hon"ble High Court shown to this Court as stated in para 4 is also false in as much as this Court is availing Puja vacation since 19.10.94 to 3.11.94. It is also totally false regarding meeting of any learned Counsel at my home place in Guwahati (Jalukbari) on 13.10.94 and 17.10.94 regarding this matter. I was very much present at the Court chamber on 17.10.94. It is to be noted that I was at home in Guwahati with due permission from learned District Judge (D), Mangaldoi as well as arrangement made by the learned District and Sessions Judge, Darrang Mangaldoi by vide order No. 84 dated 3.10.94 for Puja vacation in the interest of smooth running of the administration of justice. So statement made in this petition by Smt Bhogeswari Deka squarely warrant contempt, proceeding. But as Petitioner is women and not partly to this case as such I have declined to take action against the Petitioner. Moreover, she is warned in future that action will be taken in case of any such unwanted petition will be filed the Court. It is to be noted that this petition No. 2053/94 is filed received by me at 2 P.M. today after passing release order of Kamala Keot Hence this order later on is passed purely on aforesaid petition (No. 2053/94).

Accordingly this petition is disposed of on such observation.

16. It would appear from the aforesaid order that the learned Munsiff immediately on receipt of the application (Annexure-2) made it clear that the allegations made against him are false. He, however, exonerated the wife of the Petitioner from being hauled up for contempt as she is a woman. This order passed by the learned Munsiff instantly on receipt of Annexure-2 shows the defence he had taken against the probable charge of non-compliance of the order of the High Court. This order passed instantly otherwise shows that the defence set-up by the Appellant was not the outcome of any subsequent thought.

17. A copy of the order dated 3rd October, 1994 (Annexure-3) passed by the District Judge allowing the Appellant to avail of vacation was served on the Secretary of Mangladoi Bar Association. In this order it has been specifically stated that the Munsiff No. 2, if he joins in the meantime, would remain in charge of the office from 4.10.1994 to 18.10.1994. It is stated on oath that the Munsiff No. 2 joined before the vacation started. Therefore, during that period the 2nd Munsiff was in-charge of the office and Court of the Munsiff at Mangaldoi. Normally, urgent matters during the vacation are disposed of by the Officer Incharge of the Court. This is a well known practice prevalent since time immemorial. It is also known to all concerned that a judicial officer incharge of an office attends during vacation to dispose of the urgent matters. It is, therefore, not understood as to why the Petitioner's wife was advised to meet the Appellant in his residence at Guwahati out of the territorial jurisdiction of his Court. The approach in this matter has been misdirected. A Judicial Officer out of the territorial limits of his jurisdiction cannot be moved to pass any judicial order. In our considered opinion, the various circumstances as available in this case are not compelling enough to come to the conclusion that the Appellant has committed the offence as alleged.

18. The order passed by the High Court in Civil Revision No. 478/94 alleged to have been disobeyed reads as follows:

Mr. Goswami submits that the decree passed in Title Suit No. 18/73 was executed on 11.10.78 and decree once executed cannot be executed for the second time. At present there is no suit or any appeal is pending. Therefore, issuance of order under Order 39 Rule 2A of CPC is illegal. The Petitioner has been now detained in Civil Prison in pursuance of the order dated 14.10.94.

Considering the submissions of the counsel for the Petitioner, I order that the Petitioner shall be released immediately on PR bond of Rs. 1000/-.

19. It would appear from the above order that the Petitioner was directed to be released immediately on PR Bond of Rs. 1000/-. The Petitioner's wife went to the Superintendent of District Jail, Mangaldoi with the said order and submitted a PR Bond for release of her husband. Since the said order was not confined to any particular authority, it was incumbent on the part of the Superintendent of District Jail to release the Petitioner on his furnishing PR Bond of Rs. 1000/-. The Superintendent of District Jail disobeyed the order of the High Court on the plea that an order is necessary from the learned Munsiff who had passed the order of detention for release of the Petitioner. The conduct of the Superintendent of District Jail in refusing to accept the PR Bond is reprehensible. The learned Single Judge had issued a note of warning to him. Since there is no appeal preferred against this part of the order, we refrain from proceeding against him for enhanced punishment.

20. The evidence as discussed appear to be self-conflicting. Therefore, it becomes difficult to arrive at a conclusion that the Appellant had wilfully

disobeyed the order of the High Court simply relying on the evidence of Shri Abdul Wahid, learned Counsel. On the face of the omissions and contradictions, it would not be safe to agree with the learned Single Judge in his decision to convict the Appellant. Shri D.K. Talukdar who was appointed as Amicus Curiae to assist the Court in this matter also submitted that the evidence on record does not substantiate the allegation so as to indict the Appellant for contempt of court and that the Appellant is entitled to benefit of doubt.

21. In the result, we allow the appeal and set aside the impugned judgment and order dated 6th may, 1999.

No order as to costs.