

(2010) 03 CHH CK 0010

In the Chhattisgarh High Court

Case No : Contempt Case (Criminal) No. 3 of 2009

Mohd. Arshad Khan

APPELLANT

Vs

Shri Prakash Choubey

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Advocates Act, 1961 — Section 9

Constitution of India, 1950 — Article 215

Contempt of Courts Act, 1971 — Section 15, 15(2)

Citation : (2010) 03 CHH CK 0010

Hon'ble Judges : T.P. Sharma, J;Rajeshwar Lal Jhanwar, J

Bench : Full Bench

Judgement

T.P. Sharma, J.—By this petition, the petitioner has prayed to draw suo motu contempt proceedings against the respondent, to handover the respondent to police for his prosecution and to handover the matter to CBI.

2. Brief facts of the case, as per the petition of the petitioner are that the respondent was practicing as Advocate in the name of his relative Shree Prakash Choubey, S/o Dal Singar Choubey in District Court Durg and in other Courts. His original name is Deen Dayal Choubey, S/o Katwaru Choubey. On the basis of complaint made against the respondent, detailed enquiry was conducted by the Bar Council of India and his name was removed from the roll of Advocates maintained by the then State Bar Council of Madhya Pradesh in Removal Proceedings No. 6/1983 vide order dated 8-4-1984. The said order was challenged by the respondent before the High Court of Delhi in Civil Writ No. 2017/84 and the same was dismissed vide order dated 22-8-1984. Again the order was challenged by the respondent before the High Court of Madhya Pradesh in M.P. No. 2490/86 which was also dismissed vide order dated 1-9-86 and the order removing the name of the respondent from the roll of Advocates was affirmed by the Division Bench of the High Court of Madhya Pradesh. The petitioner herein has filed W.P. No. 3333/2003 before this Court against the Bar Council of India & 10 others in which the respondent herein was made as party

respondent No. 10 who has filed return on 5-1-2004 supported by an affidavit in which he has mentioned his name as Shree Prakash Choubey, S/o Late D.S. Choubey and he has mentioned his profession as Advocate. By filing the instant contempt case, the petitioner herein submits that after removal of the name of the respondent herein from the roll of Advocates, the respondent herein is no more an Advocate and by filing return in W.P. No. 3333/2003 supported by affidavit showing himself as Advocate, the respondent herein has committed the contempt of this Court by misleading the Court and committing forgery. The petitioner prayed for taking suo motu action against the respondent, of the criminal contempt committed by the respondent.

3. We have heard Mr. V.G. Tamaskar, learned counsel for the petitioner, perused the contempt case and the material available on record.

4. Mr. V.G. Tamaskar, learned counsel for the petitioner, submits that in the present case, the Advocate General has not filed any petition for taking cognizance or the petitioner herein has not obtained consent of the Advocate General in writing. Mr. V.G. Tamaskar argued that this is a fit case in which the Court is required to take cognizance on its own motion to punish the contemnor who has dared to commit contempt of this Court by filing false return supported by false affidavit in W.P. No. 3333/2003 on 5-1-2004. Mr. Tamaskar further submits that in Contempt Petition (Criminal) No. 4/2003 at the instance of private party this Court has taken cognizance vide its order dated 2-12-2003. In Misc. Criminal Case No. 837/1993 the High Court of Madhya Pradesh has also taken suo motu cognizance of contempt on the basis of the petition filed by private party.

5. Mr. V.G. Tamaskar, learned counsel for the petitioner, placed reliance in the matter of N. Dutta Majumdar v. Anil Kumar Bose in which the High Court of Calcutta has held that Disciplinary Committee of Bar Council constituted u/s 9 of the Advocates Act is a Court subordinate to High Court. Mr. Tamaskar further placed reliance in the matter of Income Tax Appellate Tribunal v. V.K. Agarwal and Anr. in which the Apex Court has held that Supreme Court can take suo motu cognizance of the contempt of Income Tax Appellate Tribunal i.e. courts and tribunals subordinate to it. Mr. Tamaskar also placed reliance in the matter of In Re: Vinay Chandra Mishra³ in which the Apex Court has held that Supreme Court can take cognizance of contempt of a High Court and suo motu initiate contempt proceedings against the contemnor, in case of complaint made by Judge that the contemnor has committed contempt in the face of his Court. Mr. Tamaskar relied upon the matter of Arundhati Roy, In Re:⁴ in which the Apex Court has held that filing of an affidavit caused no wrong to any Judge personally but tried to cast an injury to the public by creating a wrong impression in the mind of the people regarding integrity, ability and fairness of judiciary, as such, it amounts to contempt of court. Mr. Tamaskar further relied upon the matter of Secretary, Hailakandi Bar Association v. State of Assam and Anr. in which the Apex Court has held that false and fabricated report and affidavit to mislead the

court and in spite of ample opportunity to make good the lapses made in the report, failure to make good the lapses amounts to contempt. Mr. Tamaskar also relied upon the matter of Afzal and Anr. v. State of Haryana and Ors. in which the Apex Court has held that making false statement in judicial proceedings is contempt. Mr. Tamaskar placed reliance in the matter of Dhananjay Sharma v. State of Haryana and Ors. in which the Apex Court has held that filing of false affidavit, or making false statement on oath or adducing false evidence before the Court amounts to criminal contempt of the Court. Mr. Tamaskar further placed reliance in the matter of R.K. Anand v. Registrar, Delhi High Court in which the Apex Court has held that interference with judicial proceedings by Senior Advocates, defence counsel colluding with Special Public Prosecutor for suborning prosecution witness in criminal trial is contempt. Mr. Tamaskar also placed reliance in the matter of Ajay Kumar Pandey, Advocate, In Re:9 in which the Apex Court has held that scandalizing the court is a criminal contempt. Mr. Tamaskar relied upon the matter of T. Deen Dayal v. High Court of A.P. in which the Apex Court has held that scurrilous allegations against a High Court Judge is a criminal contempt. Mr. Tamaskar further relied upon the matter of In the matter of Anil Panjwani¹¹ in which the Apex Court has held that scurrilous and reckless allegations made against a Supreme Court Judge by respondent in his affidavits filed in appeal before Supreme Court amounts to criminal contempt. Mr. Tamaskar also relied upon the matter of Radha Mohan Lal v. Rajasthan High Court (Jaipur Bench) in which the Apex Court has held that unfounded and irresponsible allegations made against a High Court Judge amounts to criminal contempt. Mr. Tamaskar placed reliance in the matter of Arun Paswan, SI v. State of Bihar and Ors. in which the Apex Court has held that abusive slogans raised against judiciary and a District Judge outside the courtroom within the court premises amounts to criminal contempt. Mr. Tamaskar further placed reliance in the matter of State of Rajasthan v. Prakash Chand and Ors. in which the Apex Court has held that disparaging and derogatory remarks made by a Single Judge against Chief Justice or Brother Judges amounts to contempt of court. Mr. Tamaskar also placed reliance in the matter of Rajendra Sail v. M.P. High Court Bar Association and Ors. in which the Apex Court has held that criticism likely to interfere with due administration of justice or undermine confidence that public reposes in courts of law as courts of justice, ceases to be fair and reasonable criticism and amounts to criminal contempt of court.

6. Mr. V.G. Tamaskar, learned counsel for the petitioner, further argued that false affidavit filed by the respondent herein in W.P. No. 3333/2003 itself is criminal contempt of this Court, therefore, initiation of criminal complaint suo motu, is necessary to punish the contemnor and in this case, consent or motion made by the Advocate General is not required for initiating proceedings of criminal contempt and to punish the contemnor.

7. As held in the cases cited by learned counsel for the petitioner, filing of false/tampered/forged/scandalous report, documents, reply, affidavit in a judicial proceeding is contempt of Court and the Court can take cognizance of the

criminal contempt in accordance with Section 15 of the Contempt of Courts Act, 1971 (for short "the Act") which provides the following three modes for taking cognizance:

- (1) on its own motion;
- (2) on a motion made by the Advocate General; and
- (3) on a motion made by any other person with the consent in writing to the Advocate General.

In the present case, motion has not been made by the Advocate General. The petitioner herein has not filed this petition with the consent in writing to the Advocate General, but the petitioner has prayed for taking suo motu action against the contemnor.

8. As held in the aforecited cases, Court is also competent to take suo motu cognizance for the criminal contempt in appropriate cases. While dealing with the question of taking cognizance in case of criminal contempt, the Apex Court in the matter of S.K. Sarkar v. V.C. Misra observed as under:

In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least.

9. While dealing with the same question the High Court of Delhi in the matter of Anil Kumar Gupta v. K. Subba Rao has observed that a petition for suo motu contempt should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information or not. The High Court of Delhi concluded the proceeding with the following observations:

The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it.

10. By relying upon the aforesaid observations of the Delhi High Court, the Apex Court in the matter of P.N. Duda v. P. Shiv Shanker and Ors. has held that "the

direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts", and dismissed the petition for taking suo motu cognizance against the contemnor on the basis of the petition filed on behalf of private party, and has considered that the said petition is nothing more than an information.

11. While dealing with same question, the Apex Court in the matter of State of Kerala v. M.S. Mani and Ors. has held that requirement of obtaining prior consent in writing of Advocate General for making motion by any person other than Advocate General is mandatory and failure to obtain prior consent would render the motion non-maintainable. Obtaining consent subsequently would not cure the initial defect. Para 6 of the said judgment reads thus,

6. The requirement of consent of the Advocate-General/Attorney-General/Solicitor-General where any person other than the said law officers makes motion in the case of a criminal contempt in a High Court or Supreme Court, as the case may be, is not a mere formality; it has a salutary purpose. The said law officers being the highest law officers at the level of the State/Centre as also the officers of the courts are vitally interested in the purity of the administration of justice and in preserving the dignity of the courts. They are expected to examine whether the averments in the proposed motion of a criminal contempt are made vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further, cases found to be vexatious, malicious or motivated by personal vendetta and not in public interest will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme Court is not accompanied by the written consent of the aforementioned law officers, the very purpose of the requirement of prior consent will be frustrated. For a valid motion compliance with the requirements of Section 15 of the Act is mandatory. A motion u/s 15 not in conformity with the provisions of Section 15, is not maintainable.

12. While dealing with same question, the Apex Court in the matter of Bal Thackrey v. Harish Pimpalkhute and Ors. has held that person intending to file contempt petition is required to obtain consent from the Advocate General before filing the contempt petition and in absence of such consent, the petition is not sustainable under the law. In Bal Thackrey's case, the Apex Court has issued direction for framing of necessary rule or practice direction by the High Courts in terms of Duda case (supra). Para 26 of the said judgment reads as follows:

26. Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda case. Accordingly, we direct the Registrar General to send a copy of this judgment to the Registrars General of the High Courts so that wherever rule and/or practice direction on the lines suggested in Duda case has not been framed, the High Courts may now frame the same at their earliest convenience.

13. As per pleadings & documents of the petitioner, name of the respondent has been removed from the roll of Advocates vide order dated 8-4-1984, but the respondent is still practicing as Advocate and in response to the writ petition filed on behalf of the petitioner herein before this Court i.e. W.P. No. 3333/2003, the respondent herein has filed return on 5-1-2004 supported by an affidavit in which he has shown himself as Advocate. The aforesaid writ petition is still pending before this Court. The petitioner herein has not filed any material to show that he has filed any petition for taking suo motu action against the respondent in the aforesaid writ petition, in the year 2004 or till date. The petitioner has not made any request for obtaining consent to the Advocate General. The Advocate General has not filed any petition for initiation of criminal contempt against the respondent herein. The petitioner herein has filed the instant contempt case without obtaining any consent from the Advocate General.

14. We find following special features of the present contempt case:

- (1) The petitioner has not made any request to the Advocate General for obtaining sanction as required u/s 15 of the Act.
- (2) The Advocate General has not made any motion for initiation of criminal contempt against the respondent in terms of Section 15(2) of the Act.
- (3) The petitioner has filed the instant criminal contempt case without any consent from the Advocate General.
- (4) The alleged affidavit has been filed by the respondent in W.P. No. 3333/2003 on 5-1-2004 i.e. more than five years prior to filing of this contempt case.
- (5) W.P. No. 3333/2003 is still pending before this Court.
- (6) The petitioner has not filed any petition for taking suo motu cognizance of criminal contempt or for initiation of criminal contempt in the said writ petition.
- (7) Suo motu cognizance has not been taken in W.P. No. 3333/2003.

15. In view of the above, the instant contempt case is not maintainable. Consequently, the contempt case is dismissed, at the admission stage itself.

16. We feel that the rules framed by the High Court are not in consonance with the direction given by the Apex Court in the matter of Bal Thackrey (supra). The Registrar General of this Court is directed to take note of this fact.

17. A copy of this order be supplied to the Registrar General of this Court.