

(2010) 02 AHC CK 0193

In the Allahabad High Court

Case No : Criminal Contempt Petition No. 9 of 2009

Nisha Srivastava (KM.), Judicial Magistrate-I, IN RE :
Allahabad

APPELLANT

Vs

Dinesh Kumar

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(a), 2(c)

Citation : (2010) 02 AHC CK 0193

Hon'ble Judges : Imtiyaz Murtaza, J and Shyam Shankar Tiwari, J

Final Decision : Allowed

Judgement

Imtiyaz Murtaza J.

1. Present contempt petition has its genesis in the reference made by Km. Nisha Srivastava, Judicial Magistrate I Allahabad for initiating contempt proceeding under the Contempt of Court Act 1971 against Sri Dinesh Kumar and others for scandalizing the officer by lodging F.I.R which was registered at case crime No. 462 of 2009 under section 384 IPC P.S.Indrapuram District Ghaziabad.

2. In reference made to this Court, the officer recapitulated the facts as under: On 8.3.2009, the officer left for Sonebhadra for her native place for Holi festival. It is alleged that on 13.3.2009 at about 10 a.m, a bunch of papers was thrown inside her house i.e. J8 situated in judicial officer's colony known as Juhi Colony Rajapur, Allahabad. It is further alleged that her sister was at that time present at the house having returned to Allahabad on 13.3.2009 at 5 a.m. The sister, it is further alleged, untied the bunch of papers which consisted of photo copies of complaint made to Hon. Chief Justice, paper cuttings and F.I.R dated 28.2.2009 lodged at Ghaziabad naming one lady SO and the officer and one person (male) of Mahila Thana Allahabad. The complaint substantially mentioned that two ladies accompanied by one male had visited the complainant house on 22.2.2009 demanding illegal gratification to the extent of Rs. 2 lac from him in exchange for favour of expunging the case lodged at case crime No. 68 of 2007. The allegation

further is that the Lady S.O gave her identity and conveyed to him that she had come in connection with investigation of the case. It is further alleged that when the complainant rang up the local police, both the ladies with accompanying male left the place. In her reference, the officer explained that 22.3.2009 being Sunday, and 23.3.2009 being also holiday on account of Shivratri, she was present at Allahabad and there was no occasion for her to have left the station and further that she had no acquaintance with Leena Srivastava the lady S.O.

3. On the reference the office of this Court scripted a note in which it was opined that the act of Sri Dinesh Kumar complainant of District Ghaziabad falls within the ambit of Criminal Contempt of Court. The matter ultimately reached the end of Hon. Chief Justice who vide order dated 6.5.2009 referred it to the appropriate Bench on judicial side.

4. It would transpire from the record that a criminal case was already pending against the complainant Dinesh Kumar at case crime No. 68 of 2007 registered at P.S. Mahila Thana Allahabad at the instance of the wife of younger brother of the complainant on 4.12.2007 under sections 498 A, 323, 504, 506, 406, 420, 376, 511 IPC and ? of the Dowry Prohibition Act.. It brooks no dispute that the officer being posted at Allahabad as judicial Magistrate was seized of the matter. The police had submitted Final report in the case and after weighing up the materials on record in all its pros and cons, the officer passed the order dated 27.1.2009 whereby she did not accept the final report and directed the matter to be reinvestigated. It is in this backdrop that the complainant embroidered the story in order to lend colour to the contents in the F.I.R.

5. On the case being called out to day, an objection having complexion of preliminary objection has been raised by way of an application seeking discharge from contempt proceeding. In his application, he has raised three fold questions firstly that the officer has cited certain decisions of the Apex Court the ratio of which has been misinterpreted to screen herself from departmental enquiry and criminal acts. The second question canvassed is that acts done in discharge of duties do not include cases of abuse of powers and to prop up this contention, he has relied upon a decision of the Apex Court reported in AIR 2009 SC 1404. The third point canvassed is that the officer prevailed upon the investigating officer investigating case at case crime no. 462 of 2009 under section 384, 120 B IPC lodged at P.S. Indirapuram Ghaziabad naming the officer and lady S.O of Police Station Mahila Allahabad. All the questions have been dealt with at length in the order dated 23.10.2009 and the relevant part of the order is excerpted below.

"The case referred i.e. AIR 2009 SC 1404 upon being scrutinized, appears to be one relating to police officer and therefore, the ratio of that case cannot be imported for application to a judicial officer who is protected by separate Act called Judicial officer Protection Act. Besides, it may be stated that the position is well settled by a stream of decisions that there would be no court without a presiding officer and therefore, the word court used in the Contempt of Courts Act has the meaning of a Court with a presiding officer and not the empty court

room. Under the circumstances, abusing or scandalizing the Presiding officer of the Court is really the crux of the matter and constitutes contempt of Court under the Act.

The third point canvassed before us is that the officer prevailed upon the investigating officer to scuttle the investigation. To bolster up this contention, he stated that the investigation was taken to finality within a span of six days which is unheard of in history. The learned counsel has also referred to conversation allegedly recorded by the complainant Dinesh Kumar which is annexed as Annexure R.10 to his Discharge Application. We have gone through the Annexure R. 10. It refers to conversation between Dinesh Kumar complainant and one S.C.Sharma, the investigating officer of the said case i.e. case crime No. 462 of 2009 lodged at Ghaziabad. We have searched the entire conversation translated in English which is contained in Annexure R10 for reference to the officer. The crux of what has been stated therein is that there was pressure upon the person describing himself as S.C.Sharma to file final report in the matter. However, there is not an iota therein bespeaking that the officer was involved or she tried to prevail upon the investigating officer. Even otherwise, the truthfulness of the conversation whether the person speaking as S.C.Sharma was the same person or someone was impersonating himself as S.C.Sharma, remains untested. The officer is a judicial officer who could not leave the station without permission to leave the station. The contemnor has not brought on record anything which could evince that the officer had left Allahabad for Ghaziabad on and around the date alongwith lady S.H.O. Come what may, it is not the stage at which the veracity of the allegations can be gone into."

It is settled position in law that any conduct by which the course of justice is perverted either by a party or a stranger is a contempt. Acts which are calculated to undermine the authority of the court and disturb the confidence of the citizen in the efficacy of its order will have to be considered as contempt. It is obvious from the record that the officer had passed the order on 29.1.2009 rejecting the final report which annoyed the contemnor and ostensibly, in an attempt to avenge for the orders he embroidered the story and filed the F.I.R. This conduct of the contemnor offends the majesty of law and undermines the dignity of the court.

Be that as it may, it would suffice to say that there are catena of decisions on the point by which the judicial officers have been amply protected for harassment either from the executive or by the public at large for the acts done in the discharge of judicial functions. Besides the decision of Delhi Judicial Service Association v. State of Gujarat (1991) 4 SCC 406, there is excathedra decision of the Apex Court in U.P. Judicial Officers Association v. Union of India (1994) 4 SCC 687 wherein the Apex Court added to the guidelines issued in Delhi Judicial Service Association v. State of Gujarat (supra). While laying down guidelines, the Delhi Judicial Officers Association v. State of Gujarat, the Apex Court had spelt out that the above guidelines were not exhaustive but these were minimum

safeguards which must be observed in case of arrest of a judicial officer. These guidelines should be implemented by the State Government as well as by the High Courts. In *U.P. Judicial officers Association v. Union of India* the para 3 being germane to the issue involved in this matter is abstracted below.

"In *Delhi Judicial Service Association v. State of Gujarat* this Court issued the following guidelines: (SCC pp 411 12)

"(A) A judicial Officer should be arrested for any offence under intimation to District Judge or the High Court as the case may be.

(B) In case of necessity for immediate arrest of a Judicial officer only a technical or formal arrest may be effected.

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial officers, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) Ordinarily there should be no handcuffing of a Judicial Officer.

The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial officer. These guidelines should be implemented by the State Government as well as by the High Courts."

The aforesaid guidelines were in regard to all offenses generally; but when any criminal conduct is attributed to a judicial officer in discharge of his duties or in purported exercise or discharge of his duties, we direct that in addition, no crime for investigation should be registered pursuant to any FIR without the permission of the Chief Justice of the High Court concerned."

8. Reverting to the facts of the present case, it would appear, as stated *supra*, the officer had not accepted the Final Report submitted in the criminal case registered by the wife of younger brother of Dinesh Kumar on 27.1.2009 and aggrieved by the order aforesaid, the F.I.R naming the officer as one of the accused in the matter was lodged. Therefore, the F.I.R against the officer *ex facie* appears to be the offshoot of order dated 27.1.2009 whereby the final report had not been accepted by the officer. The object of the contempt proceeding is that

the authority of the court is not lowered and the confidence of the people in the administration of justice is not weakened. In the instant case, the action of lodging the F.I.R, it would appear, is fraught with the consequence of undermining the confidence of the public in the competence and integrity of the officer and it cannot be ruled out that it is likely to deflect the court itself from a strict and unhesitant performance of its duties.

9. We however indicate to ourselves the piece of advice that the Court while dealing with contempt matter should not be over or hypersensitive and should not exercise this jurisdiction on any exaggerated notion of the dignity of the Judges and must act taking a dispassionate view of the entire matter. It is the settled principles that the rule of contempt is not to be lightly invoked and is not to be used as a cloak to cow down somebody into submission on the basis of fancied claim. It is intended to offer protection to the court itself or to a party in judicial proceeding whose interest may be affected or the authority of the court is lowered and the confidence of the people in the administration of justice is weakened. At the same time, it should be borne in mind that the Court is the protector of public justice and it has a stake in the dignity and protection of those who man the court.

10. In the affidavit filed by the contemnor alongwith application seeking discharge. The prayer for discharge has already been disallowed. In para 2, the contemnor averred that after passing order dated 27.1.2009 officer stood transferred to Lucknow and therefore she was not seized of the file of crime no. 68 of 2007 and therefore, the plea that the contemnor filed FIR at case crime no. 462 of 2009 dated 28.2.2009 to put pressure on her for favourable order in crime no. 68 of 2007, is false. It is also averred that the contemnor and his brother do not practise law at Allahabad and therefore, the question of interference as alleged does not arise. In the self same para, the contemnor reiterated the contents of the F.I.R stating that some lady of the same complexion and stature personating herself as Magistrate posted at Allahabad approached him and demanded gratification. In para 3, the contemnor denied that he knew the Magistrate from before or that he ever appeared before her or before any court till filing of the counter affidavit. In para 4, it is averred that the contempt has been initiated against the contemnor as a counter blast to criminal action sought against her through complaint dated 14.3.2009 which it is alleged is already pending before Chief Justice and before Director General of Police Lucknow. In para 6, it is averred that the crime received wide publicity in newspaper on 2.3.2009 and he had no role and explained that he inquired from the news agency and he was informed that the news was collected from the police station before being published in the news papers. In para 7 of the affidavit, it is averred that he verified personally from Allahabad and he was satisfied that the lady personating herself as Magistrate who had tried to extort money from him was in fact posted as Magistrate at Allahabad and her name was Nisha. In para 8, the contemnor averred that on enquiry made in the first or second week of March 2009 from Allahabad he surfaced that the case at case

crime No. 68 of 2007 fell within the jurisdiction of the self same Magistrate who had approached her and had demanded money and thereafter he made complaint to Hon. Chief Justice for taking necessary department and criminal action under section 384, 218, 219 120 B IPC followed by complaints to the Governor of U.P. D.G.P Lucknow. He also explained that had he known the Magistrate from before he would have certainly mentioned her name in the F.I.R instead of saying that one of the ladies told her name as Ms. Nisha Magistrate on being asked. In para 9, he averred that he received letter dated 4.4.2009 and 14.4.2009 from C.O. Police V Allahabad to come over to Allahabad to assist him in the investigation of the complaint dated 14.3.2009. In para 11 the contemnor averred that to frustrate actions yet to be taken by the High Court administration, Ms. Nisha intentionally filed contempt application dated 17.4.2009 and succeeded in getting notice issued on 20.5.2009 and such course of action amounted to grave misconduct on her part. In para 12, he denied to have knowledge whether any final report was filed by the police or what orders were passed on final report by the concerned Magistrate and he termed efforts to link order dated 27.1.2009 with case crime no. 68 of 2007 as baseless. In para 13, it is averred that the proceeding in case crime No. 68 of 2007 were taken in challenge in writ petition in which Division Bench of the High Court stayed the proceeding. It would transpire from the record that in the proceeding challenged before the High Court, the Division Bench passed the order referring the matter to Mediation Centre on account of the case being one relating to dowry dispute and the stay order against arrest was limited subject to report of mediation centre. It is further averred that Ms. Nisha after passing order dated 27.1.2009 in case crime no. 68 of 2007 has been transferred to Lucknow. This averment does not commend to us for acceptance as the officer has not been transferred on any administrative ground by way of punishment as a result of complaint made by the contemnor. The office has not reported whether the complaint preferred by the contemnor against the officer addressed to Chief Justice is still in active consideration. However, it would suffice to say that we are dealing with contempt proceeding and we are not concerned with any action if any being taken on administrative side by this Court.

11. An application anointed as Unconditional apology has been filed by the contemnor which is not either accompanied with any affidavit nor does it appear to be proper application as it does not bear any registration number or does it appear to have been processed and filed by adopting procedure prescribed. However, in the said application, it is stated that he was not aware of any statutory law or case law reported till date which bars reporting of crime/ registration of FIR for the offence of extortion as defined under section 384 IPC against a Judicial Magistrate. However, he canvassed that the aforesaid case law does not bar reporting of extortion to the police against the judicial officer. In para 3 it is stated that reporting of crime to the police against the officer at Ghaziabady was neither intention nor deliberate. In para 4 it is stated that the contemnor undertakes not to report such offence ever against judicial officer and

tender his unconditional apology for reporting of such offence/incident to the local police at Ghaziabad against Ms. Nisha Srivastava Judicial Magistrate.

12. Before we proceed further with the matter, we would also not flinch from saying that the apology is not to be used as a weapon of defence forged always to be used as a shield to protect the contemnor as a last resort. It is intended to be evidence of real contriteness. The apology, in order to dilute the gravity of the offence, it has repeatedly been ruled in catena of decisions, should be voluntary, unconditional and indicative of remorse and real contrition and it should be tendered at the earliest opportunity. We have to administer caution to ourselves that we should not be inveigled into accepting apology from those who are addicted to using contemptuous language and making scurrilous attacks and have to their discredit, earlier instance of misfeasance. From the apology tendered by the contemnor, there is discernible lack of contriteness inasmuch as in para 2 it is stated that the case law cited does not bar reporting of offence of extortion to the police against the judicial Magistrate. In the counter affidavit as discussed above, it clearly transpires that the contemnor at no stage was repentant for his conduct and instead, split up the facts in order to show that the officer approached him at Ghaziabad alongwith lady police officer and demanded illegal gratification for showing favour in the criminal case pending in her court.

13. In *L.D. Jaikwal v. State of U.P.*, [1984] 3 SCC 405, the Apex Court described the apology as a "paper apology and refused to accept it in the following words:

"We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a "licence" to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their selfrespect, to join the judiciary if they are expected to pay such a price for it. And no sitting judge will feel free to decide any matter as per the dictates of his conscience on account of fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fail in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts."

In the above perspective, it cannot be ruled out that the contemnor set up the entire theory in order to save his skin. In this view of the matter, the apology offered does not commend to us for acceptance and it is turned down.

14. We would like to quip here that if the judiciary has to perform its function in

a fair and free manner, the dignity and authority of the court has to be respected by all concerned failing which the very constitutional scheme and public faith in the judiciary would run the risk of being eroded. Since the contemnor is an Advocate practising law as reported by the office in its note dated 2.5.2009, the matter requires to be considered with a little more seriousness. We feel called to say that the contemnor who is stated to be an Advocate is not exempt from ordinary disability which the law imposes and his position is not inviolable and his privileges cannot extend to interfere with the administration of justice. On the other hand he is expected to help in subserving the course of justice and not impede it in any manner. Any departure would be construed to be violative and neglecting his duties and obligations. A lawyer is a person educated and trained in law. There are barriers which must be known to a lawyer and it should not be crossed. He should not overstep the limits of decency and ethics in the matter of his behavior towards the court.

15. In *Delhi Judicial Service Association v. State of Gujrat*, (1991) 4 SCC 406, the Apex Court held as under.

" The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with."

16. In *N.B. Sanghvi v. High Court of Punjab and Haryana* (1991) 3 SCC 600 the Apex Court observed as under:

"The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the

executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strongwilled judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence."

17. The foundation of judicial system which is founded on the independence and impartiality of those who man it will be shaken if every disgruntled litigant is permitted to proceed against the Presiding judicial officers with impurity in the manner as has been done by the contemnor, the much cherished judicial independence which is of vital significance to any free society has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. The tendency of browbeating the judicial officers into submission is on the increase and when there is deliberate attempt to scandalise, it not only shakes the confidence of the litigating public in the system but causes damages to the reputation of the presiding judge and brings disgrace to the fair name of the judiciary.

18. A Judge or Magistrate has a duty to discharge his judicial functions and he passes order in the manner as he likes fit to the best of his capability in the facts and circumstances of the case. The courts cannot be intimidated to seek favourable orders or to make the court run on his dictate. In the present case, the conduct of the contemnor amounts to intimidating the court and lowering the authority and it clearly amounts to interference with due course of judicial proceedings which were being conducted by the Presiding officer. The power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty to protect members of the subordinate courts. In the above conspectus, the charge related to criminal contempt framed against the contemnor is fully established.

19. In the above conspectus, we have no hesitation to say that the charges of criminal contempt established against a practising lawyer cannot be taken lightly who carries the trapping of an officer of the Court whose duty is to assist the Court and uphold the majesty of law and dignity of the person manning the court. No judicial system can tolerate such ignoble act and conduct of a practising Advocate. The crucial question that remains is what would be the appropriate punishment to the contemnor.

20. Reverting to the case in hand, we are of the firm opinion that the apology tendered by the contemnor does not exude bona fide or manifest genuineness

ostensibly for the reasons that the apology has been tendered at a stage when the contemnor sensed that his goose was cooked. As stated supra, he has set out his own version referring to various acts of omission and commission by the presiding officer and lastly stated that she has made reference actuated by malice against him. It would clearly transpire that aggrieved by the order passed by the Magistrate, the contemnor set up falsely plea and lodged the F.I.R. As a lawyer, it does not appeal to us that he was not aware of the statutory provision or the latest law on the point. It must also be noticed that a judicial officer in case he or she has to leave the station, she has to obtain permission indicating the place where he or she wishes to visit but in the instant case, no such document was brought to our notice suggesting that on the date indicated by the contemnor, the officer was in fact at Ghaziabad demanding illegal gratification to the extent of Rs. 2 lacs to protect the contemnor and his brother from further criminal action. There is a felt need to curb such incidence. To cap it all, the majesty and dignity of the court has to be preserved. It should not be forgotten that frequent attacks on the dignity of the courts would shake the very foundation of the judiciary. The courts have to perform judicial functions in responsible yet disagreeable ambiance and they require utmost protection. The attack made on presiding officers disparaging in character and derogatory to his/her dignity would vitally shake the confidence of the public in him/her. The entire story set up by the contemnor may well be termed as vitriolic attack on the officer. The vitriolic attacks made on the officer were much more than mere insult and in effect the contemnor scandalized the officer who manned the court in such a way as to create distrust in the popular mind and impair confidence of the people in court. The administration of justice must remain independent, clean, fearless and impartial. If an Advocate uses the vile of browbeating the Presiding officer by his toxic vitriolic attack, it is indeed disquieting and should not be viewed with equanimity.

21. As a result of foregoing discussion, the reference made to this Court is allowed and the contemnor Dinesh Kumar is held guilty of criminal contempt.

22. Now the question arises what would be the appropriate sentence on the point. It is the grossest contempt of court and in the interest of justice and to uphold the majesty of the courts, it is desirable to award jail sentence in addition to fine. The contemnor filed a paper at a last stage styling as unconditional apology although as stated supra, it does indicate clear lack of real contriteness.

23. We accordingly convict him for offences under section 2 (C) (1) of the Contempt of Courts Act and sentence him to undergo simple imprisonment for five months and to pay a fine of Rs.20,000/. In default, it may be prescribed, contemnor shall undergo further simple imprisonment for 15 days. However, the punishment so imposed shall be kept in abeyance for a period of sixty days so as to enable the contemnor to approach the Apex Court if so advised. It needs hardly be said that immediately after expiry of sixty days in case no stay order is furnished by the contemnor, he would be taken into custody forthwith to serve

out the sentence immediately.

24. The matter shall be listed before this Court on 11.5.2010 for ensuring compliance.