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(1983) 04 RAJ CK 0012

In the Rajasthan High Court

Case No : Criminal Contempt Petition No. 94 of 1981

Om Prakash — APPELLANT

Vs

Novelty Cinema — RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:
Contempt of Courts Act, 1971 — Section 12, 2, 20

Citation : (1983) WLN 215

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

S.K. Lodha, J.—This is a contempt petition u/s 12 of the Contempt of Courts Act No. (LXX of 1971) (for short ''the Act'') by Shri Om Prakash, who, at the relevant time was working as Vikas Adhikari, Panchayat Samiti, Raisinghuagar.

2. The facts leading to this petition may briefly be notice. Novelty Cinema (non-petitioner No. 1) through its partner Yogendra Nath Handa and non-petitioners No. 2 to 10 filed S.B.Civil Writ Petition No. 2136 of 1980. This petition was admitted by this Court and the following stay order was passed:

Issue notices returnable within two weeks. Notices be given Dasti. Meanwhile the respondent No. 2 should proceed with the fixation of rates of fresh admission tickets in order to give effect to Annexures 3 and 3A and notify the case. Till that is done, the earlier arrangement would contiune and the licence of the petitioner could not be cancelled on the ground No. 2 till further orders. The petitioner should give surety to the satisfaction of the Collector Ganganagar that they would pay the tax as per the revised schedule of the Entertainment Tax Act, in case the writ petition is dismissed, even without realising the same from the customers.

In that writ petition, imposition of the revised rate of entertainment tax was challenged. An article is said to have been published in the Itwari Patrika,, dated December 28, 1980 relating to the entire history of the writ petition. The article

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starts under the caption "Bhala ho Nyaypalika ka" in that article the statement made by Shri Yogendra Nath Handa was quoted. The allegation is that this article was published with an intention to create bias against the Government Departments including Collecter, Panchayat Samiti and its other officials and that as the writ petition was admitted, there was no occasion for non-petitioner No. 1 to have given his remark in the matter which was already sub-justice. Non-petitioner No. 11 is Editor and publisher of Itwari Patrika, Rotary Printers, Kesargarh Jawaharlal Marg, Jaipur and non-petitioner No. 12 is Chiranjeev Joshi, Reporter of Itwari Patrika c/o Rotary Priters (Itwari Patrika) Kesargarh, Jawaharlal Marg, Jaipur. According to the petitioner by publishing this article, non-petitioner No. 11 and 12 have created another court and forum where they have started "character assination of the Government official more particularly of the petitioner and Collector, Sriganganagar. It has been stated that the article is contemptuous and is intended to have been published with a view to bring in contempt the Government officials and to flatter the presiding officer of the Court. It was prayed that the publication of the said article amounts to contempt and contemners may be punished.

3. The papers were put before Hon''ble the Chief Justice, and he, on February 6, 1981, ordered that the petition for contempt shall be heard and determined by us On Feb. 9, 1981, after persuing the application and the affidavit in support thereof, we directed the issuance of notice to the nonpetitioners to show cause why the proceedings for contempt be not initiated against them. Reply to the contempt petition was filed on behalf of the non-petitioners No. 1 to 10. It was submitted in the reply that so far as non-petitioners No. 1 to 10 are concerned no action has been attributed to them in regard to the article in question and that M/s. Novelty Cinema has been arrayed as party, through its partners, but then they have done nothing in the matter, as far as Yogendra Nath Handa is concerned it was stated that he was not party to the petition and that non petitioner No. 1 to 10 are not at all responsible for the article. It was further mentioned that the write-up has been written by non-petitioner No. 12 on the basis of some informal chit-chat between non-petitioner No. 12 and Yogendranath Handa, and that Yogendra Nath Handa has not written the article at all and if non-petitioner No. 12 has chosen to put in black and white in bis own way by taking what has been said in a chit-chat as having been so said by Yogendra Nath Handa.then it cannot to said that Yogendra Nath Handa is the author of the article and he ever desired the same to be published that way nor can be said that what (he article says is what Yogendra Nath Handa told non-petitioner No. 12. Separate reply was filed on behalf of non-petitioner No. 3. Reply has also been filed by K.C.Kulish and Amshonand Kothari. This reply was filed after the proceedings against non-petitioner No. 12 were dropped. It may be stated hat non-petitioner No. 12 is author of the article, which according to the petitioner is contemptuous in nature. It was mentioned in the reply that the lid article was published in the said name of Chiranjeev Saroj and naturally when an article of a free lance writer is published by a newspaper it not necessary that

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all the views expressed by the free lance writer are the views of the paper or its Editor and/or Publisher. In the alternative, it was submitted that there is nothing in the article which may be construed to be contempt of the Court and that all that article does is to make an innoccous and truthful statement that but for the judiciary it may be dificult for a citizen to live with all self-respect. It was also mentioned that this Court will protect the right of freedom of expression guaranteed by Article 19(l)(e)of the Constitution and will not proceed against in a matter like this which may hurt some Government Officer merely because it contains some comments against some Government Officers. Without prejudice to all the aforesaid, it was submitted that the non-petitioners will like to tender their apologies to the Court if it is ever considered that the publication of the article has exceeded the limits of law, and that the non-petitioners have, as a matter of fact, always been keen to uphold the dignity of the Court and have ever been champions of the Independency of Judiciary as a bulwork for the protection of the citizens'' rights. While concluding their reply and reiterating their apologies, it was prayed that the contempt proceedings may be dropped. In addition to this, additional replies were filed by K.C Kulish and Yogendra Nath Handa. K.C.Kulish, in his additional reply has stated that the contempt petition is not properly constituted. The second objection taken in the reply is that the contempt petition cannot proceed as proceedings against nonpetitioner No. 12 have been dropped. Yogendra Nath Handa, in his additional reply, submitted that the contempt petition had become time-barred as more then one year had elapsed since the alleged commission of contempt. It has further been stated that even as per the allegations made in the contempt petition, no case of commission of contempt of the court on the part of Yogendra Nath Handa is made out. In the reply, it has also stated that a captiou of the article in question will go to show that is author is one Chiranjiv Joshi who has been arrayed as non-petitioner No 12 in the contempt petition but against whom the proceedings have been dropped and that the article is not authorised by Yogendra Nath Handa and the work that can be said is that it is a version of some informal chit-chat between Chiranjiv Joshi and Yogendra Nath Handa and no more. It was submitted that the allegations made in the article, even if they are deemed to be contemptuous by this Court, cannot be attributed to Yogendra Nath Handa and that even otherwise the contents of the said article do not constitute contempt of this Court.

4. We have carefully read the article It may be mentioned that on October 11, 1982, three preliminary objections were raised on behalf of the non-petitioners by Mr. Mridul. They are as under:

(1) Respondent No. 12 Shri Chiranjeev Joshi has been dropped by this court by its order dated January 19,1982, on the ground that his where abouts are not correctly known. He is the author of the article published in ''Itwari Patrika'' dated December 28, 980, in respect of which this contempt application has been moved. Mr. Mridul''s contention is that when the author of the article has been dropped, it would not be proper to proceed with the other contamners.

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(2) Respondent No. 11 is not arrayed by his name. Respondent No. 11 is only Editor and Publisher of the Itwari Patrika, so contempt proceedings cannot be proceeded against respondent No. 11 without being arrayed by name.

(3) The remaining respondents No. 1 to 10 have only been arrayed as partners of M/s Novelty Cinema and they have not been arrayed in their individual capacity, so contempt proceedings cannot continue against them".

This Court over-ruled all the three objections observing that any observation made in the order would not in any way debar the non-petitioners or in any way prejudice them to raise the question of limitation.

5. We have heard Mr. M.D.Purohit for the petitioner and Mr. M. Mridul for non-petitioners No. 1 to 11.

6. In the first instance, Mr.Mridul urged that the article ''''Bhale Ho Nyaypalika Ka" was published in Itwari Patrika dated December 28, 1980. The contempt petition has filed on Feb. 6, 1981. Hon''ble the Chief Justice consituted the Division Bench for deciding and determining the matter on the same day i.e., Feb. 6, 1981, We ordered for issuance of show cause notice to the non-petitioners Feb. 9, 1981. It was submitted that the Court took cognizance of the contempt against Yogendra Nath Handa on October 11, 1962 when it held that it is true that non-petitioner No. 1 is M/s. Novelty Cinema, but notice has been issued to Yogendra Nath Handa, who is its partner and when Yogendra Nath Handa has appeared in person in pursuance of the-notice. The Court actually intended to proceed against the individual and not against the firm in its order dated October 11, 1982. It was submitled that when the cognizance was taken against Yogendra Nath Handa, more then 1 year had already clamed from the alleged commission of the contempt and, therefore, u/s 20 of the Act, proceedings for contempt could not have been initiated. In this connection, reliance was placed on State of Rajasthan v. Jamnadas and Ors., and other fifteen other cases (S.B. Contempt Petition No. 35 of 1982 decided on February 7, 1983), wherein a learned single Judge of this Court, after considering State of Rajasthan v. Manohar Ghoghad 1978 RLW 186, took the view that the limitation prescribed u/s 20 of the Act would not be computed on the basis of initiation of motion by any party to the lis and as such the argument that the limitation may be computed from the date of the presentation of the application, was not accepted. All the contempt petitions were dismissed and the proceedings were dropped and the notices were discharged We do not consider it necessary to examine the question of limitation u/s 20 of the Act, viz. whether the proceedings for contempt u/s 20 are barred in view of the order dated October 11, 1982, for, according to the learned Counsel for the non-petitioners, cognizance for the contempt was taken on that day. At the risk of repetition, it may be stated that article was published in the Itwari Patrika on December 28, 1980 the petition was filed on Feb. 6, 1981 and the order for issuance of notice as to why the contempt proceedings be not initiated was made on Feb.6, 1981. We express no opinion, on the aforesaid question for, in our opinion, the case

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that non-petitioner No. 1 to 11 have committed contempt of the Court, is not made out.

7. ''Criminal contempt'' has been defined in Section 2(c) of the Act. It means publication (a) by words spoken of written (b) or written or by signs (c)or by visible representations or otherwise or any matter; (d) or any other act what so ever which (i)(a) scandalizes or tends to scandalize, (b) or lowers or tends to lower the authority of any court; or (ii) prejudices or interferes or tends to interfere with the due course of any judicial proceedings; or (iii)(a) interferes or tends to interfere with, (b) or obstructs or tends to obstruct the administration of justice in any other matter.

8. A statement amounts to contempt of court only if it interferes or has a tendency to interfere with due course of pending proceedings by creating prejudice against the party, which would affect the fair hearing. It was observed by their Lordships of the Supreme Court in Naraindas Vs. The Government of Madhya Pradesh and Others, as under:

What we have to consider for the purpose of determining whether any of these statements constitutes contempt of court is whether these statements interfere or have a tendency to interfere With the due course of the appeal or the writ petition by creating prejudice against the appellant which would affect the fair hearing and disposal of the appeal or the writ petition. That effect, we are afraid, the statements in the Press Note complained of by the appellant do not have. It is not possible to hold that any of these statements constitutes contempt of court.

9. Now, let us advert to the article ''Bhale Ho Nyaypaika Ka'' in question.

10. Mr. M.D.Purohit, learned Counsel invited our attention to the following extracts from the aforesaid article.

^^---------- gkaM+k crkrs gS eS ''kq: ls gh dk;ns dkuwu dk ikcUn jgk gWw A dgh ckr u curh gks rks fonzksg djrk gWw [kqyk vkSj la''kks/ku djokkrk gWw A^^

^^------------------------ ij ;g Qfj;kn vulwuh dj nh x;h A gkaM+k mPp U;k;ky; es x;s vkSj 25 tuojh 1980 dks LFkxu vkns''k tkjh fd;k A :dk gqvk fuekZ.k dk;Z fQj py iM+k A ^^

^^---------miftyk/kh''k jk;flag uxj dk vkns''k vk;k ^^ nks fnu ds vUnj ubZ Niok dj euksjatu dj dh fVdVs fn[kk dj] fodkl vf/kdkjh dks VSDl nsdj izek.k Ik= izLrqr djs A oukZ ykbZlsUl fujLr dj fn;k tk;sxk A ^^ var es fQj mPp U;k;ky; dh ''kj.k ysuh iM+h vkSj U;k;ewfrZ xqeku ey yksk us 27 uoEcj 1980 dks LFkxu vkns''k tkjh fd;k fd miftyk/kh''k ykblsUl fujLr ugh dj ldsxs A^^

The article was published in Itwari Patrika dated July 28, 1980. The author of the article is Chiranjeev Joshi (non-petitioner No. 12) It appears that this article contains persion of some informal talk (chit-chat) between Chiran Jeev Joshi (non-petitioner No. 12) and Yogendra Nath Handa (partner of M/s. Novelty Cinema). The allegations made in the article cannot, by any stretch of

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imagination, be attributed to Yogendra Nath Handa, who has been alleged to be the partner of M/s. Novelty Cinema.

A perusal of the article shows that it contains the narration of facts as stated in the writ petition and also the issue raised therein, namely, whether enertainment tax can be enhanced in the manner it has been done.

11. Having examined the article in question, we are not satisfied that the statements referred to above, do interfere or tend to interfere with the course of proceeding, namely, writ petition, by creating prejudice against any of the parties to the writ petition. It cannot be said that the contents of the article ''Bhale Ho Nyayapalika Ka'' and its publication constitute ''criminal contempt'' as defined in Section 2(c) of the Act. We are, therefore, of the opinion that it cannot be said that non-petitioners No. 1 to 11 have committed any contempt of the court.

12. In view of this, it is not necessary for us to examine the question whether the principal contemner is not before the court, for he has been dropped by this Court by its order dated January 19,1982, as his whereabouts were not correctly known.

13. It follows from the discussion made here in above that no case for contempt of court is made out. The notices are discharged. The contempt proceedings are dropped.

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