
(2007) 07 OHC CK 0057
In the Orissa High Court

Prasanta Kumar Nayak

APPELLANT

Vs

Mrs. Harapriya Barik ' Tarai and Others

RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Constitution of India, 1950 — Article 32
Contempt of Courts Act, 1971 — Section 15, 20
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 391
Penal Code, 1860 (IPC) — Section 120B, 376, 511

Citation : (2007) CLT 179 Supp : (2007) 2 OLR 335

Hon'ble Judges : A.K. Ganguly, C.J.;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Ganguly, C.J.—This petition u/s 15 of the Contempt of Courts Act, 1971 has been filed by one Prasanta Kumar Nayak, who describes himself as a Member of the Indian Administrative Service (Orissa Cadre) with a prayer for initiating a suo motu proceeding for criminal contempt against opposite party No. 1-Mrs. Harapriya Barik " Tarai.

2. Learned Counsel submits that the petitioner is invoking the Court's jurisdiction u/s 15 of the Contempt of Courts Act, but the consent of the Advocate General, which is required to be taken before invoking this jurisdiction, has not been obtained. The learned Counsel submitted that he is seeking to initiate a suo motu proceeding of criminal contempt against opposite party No. 1 for the statements allegedly made by her.

3. In support of the petitioner's case for initiating a suo motu proceeding for criminal contempt against opposite party No. 1, learned Counsel placed reliance on certain materials.

4. The Court's attention was first drawn to an affidavit dated 28.7.1999 by opposite party No. 1 before the Court of Executive Magistrate, Cuttack and then to the letter dated 29.7.1999 of opposite party No. 1 addressed to the then

Hon"ble Acting Chief Justice of this High Court. In that letter she prayed to give her and her family some protection from disgrace, mental agony and public humiliation by restraining the newspapers from publishing any news item involving her in the alleged incident of a sex scandal. The reason for writing the said letter by opposite party No. 1 is that she was distressed in view of the news item published in different newspapers in the State on 27.7.1999 and 28.7.1999 regarding the alleged sex scandal at Bhubaneswar in which opposite party No. 1. was allegedly involved. This letter was registered as OJC No. 9456 of 1999 and in support of the same an affidavit was affirmed by opposite party No. 1 before the Court of the Executive Magistrate, Cuttack, denying the truth of the newspaper report. The affidavit runs to several pages stating therein that opposite party No. 1 was not involved in the alleged sex scandal, which was published in different newspapers.

5. The attention of the Court has also been drawn to various materials namely the statement dated 10.8.2001 made by opposite party No. 1, which was recorded before the Police u/s 161 Cr.P.C. in connection with CBI/SCB/Kolkata Case No. RC 3/S/ 2000-Cal. One portion of the said statement is brought to our attention. The same is set out below:

Sometime in the year 1998, I along with my friend Puspallata Behera, Sabitri Mishra participated in the inter-University competition at Shimla. On 9,7.1999, the PTI madam Prabasini Kar called me in the College Sports Room and informed me that certificates regarding our participation at Shimia had been received and asked me to distribute the same amongst the participants. At that time, I noticed that the seal of Utkal University on my certificate was missing. When I pointed out this fact to PTI madam, she advised me to accompany her to Bhubaneswar so that the work could be done on that day itself. She also told me that Sabita Pal would also accompany her. On this assurance I agreed to go to Bhubaneswar. Prabasini Madam also advised me to come to her house around 1.30 to 2 p.m. so that by that time she could also come back from the college.

Attention of this Court has also been drawn to another part of the statement, which is also set out below:

I further state that when I was in the bathroom, I heard their conversation according to which one Prashant was also scheduled to come. They were also talking as the said Prasant was the PS to the Chief Minister Giridhar Gomango, he might have been held up somewhere due to some work. They also told me that it was good luck that Prashant had not come by this time, otherwise he would have dragged me out by breaking open the bathroom door and enjoyed ruthlessly by biting mercilessly. After hearing this I became very much frightened and pressed the bathroom door by putting buckets full of waters and started praying Goddess Gojabayani. But, I forgot the name of "Gojabayani" and so I started murmuring "Muchukai Thakurani" and prayed to save me. After some time, I heard them talking to inform Prashant not to come as the girl was not willing to have sex with them. As I was inside the bathroom I am not in a

position to say whether the said Prashant had come to the said flat or not in that night. When I refused to open the bathroom, they threatened me not to open my mouth, otherwise, I would be hacked to death. Further, when I did not budge to their request and threats, Smt. Kar politely tried to persuade me by saying that the gentleman had gone and I should come out. She also offered me money and other valuable items for the same.

6. The attention of this Court has also been drawn to Annexure-10 to this petition, which is a petition dated 31.7.2001 filed by opposite party No. 1 to the Hon"ble Justice of this Court. In the said petition, the prayer made by opposite party No. 1 was in the form of an application to the Chief Justice to pass an order/direction for the dispatch of a copy of this petition/affidavit along with all enclosures to the CBI Office, Kolkata and their Head Quarters, in Delhi so that this concocted controversy against her can be brought to an end. A portion of the statement of opposite party No. 1, which was recorded by the CBI, was also placed before us. A particular emphasis is placed on the following portion of the statement as set out below:

On 29.7.99 we were taken to Cuttack High Court and taken to the chamber of Sri A. Pasayat, Acting Chief Justice of Orissa High Court. Before taking to the chamber of the Acting Chief Justice, I was asked to sign a petition by Prabhasini Kar and her son, a copy of the report submitted by Mahila Commission was given to me by Prabhasini Kar. All those papers were given to the Acting Chief Justice by Advocates whom I do not know.

The aforesaid statement was recorded on 14.8.2001.

7. This Court understands that in view of the aforesaid statements made by opposite party No. 1 the CBI investigated into the matter and submitted a Final Report in Final Form u/s 173(8) Cr.P.C. (Annexure"-15) to the following effect:

During further investigation, no evidence has come on record to link Shri Prashant Kumar Nayak in this case and the Hon"ble Orissa High Court, Cuttack was apprised with the aforesaid facts through Final Status Report, a copy of which has already been submitted in the Ld. Court.

It is, therefore, prayed that your honour may please be accepted the Final Report enclosed herewith and pass necessary order.

8. On the basis of such report, the CBI has also filed another report, the relevant portion of which is quoted below:

Therefore, during the course of further investigation, no evidence has come on record to link Sri Prashant Kumar Nayak in this case. The Hon"ble High Court, Cuttack, Orissa has already been apprised with the aforesaid facts through final status report, copy of which has also duly been submitted in the Ld. Court.

It is, therefore, prayed that this Ld. Court may kindly accept this closure report in respect of accused Prashant Kumar Nayak against whom further investigation

u/s 173(8) Cr.P.C. was continuing.

9. Learned Counsel for the petitioner submits that after the matter has been concluded on the basis of the aforesaid report submitted by the CBI, subsequently a complaint petition was filed before the C.J.M., Bhubaneswar against the petitioner on the basis of which learned C.J.M. on 3.7.2006 took cognizance of offences u/s 120B read with Sections 376/511 of the IPC against the petitioner and declined to accept the report in Final Form submitted by the CBI, Bhubaneswar. The said order of the learned C.J.M. has been challenged by the petitioner before this Court in CRLMC No. 1629 of 2006 and the same is pending consideration before a learned Judge of this Court.

10. At this juncture, this petition for contempt has been filed by the petitioner against opposite party No. 1, inter alia, on the ground that on 11.7.2006, opposite party No. 1 has made a further statement before the electronic media. The substance of her statement before the electronic media is that:

She was the best player of the College and also of the Balasore district and was also going outside Orissa for playing. After some days of stay in her house she completed B.A. Thereafter, Madam Pravasini Kar came and approached her parents to the effect that since she completed B.A. and has some sports certificate she will be taken to Bhubaneswar and will be engaged in a good job. The parents gave due respect to the madam and asked when she will take her to Bhubaneswar. Thereafter, the madam told her parents that she will come on 9th July. She stated that in the morning of 9th July she came to the house and took her in a white colour Scooty in between 12.00 noon and 1.00 P.M. and told her parents to return her next day morning after a preliminary discussion. Her parents agreed and told madam to take care of her and the Madam assured her parents that she will take care of her like her own daughter. Madam took her in the vehicle and dropped her in her house where her son was ready with a Maruti car and took her near the over bridge and both of them boarded a bus and reached Krishna Apartment. In Krishna apartment everything was ready. There Prasanta Nayak and Susanta Mohapatra made her half naked and they fulfilled their work on her.

Pravasini Kar allowed her to remain inside the room. Rape was committed on her. The three persons were asleep as they had taken the liquor. From the wrist watch which was in her hand she could know that it was 3.45 A.M. At the time the T.V. was not put off. After opening the door she could see that all the three had no dress on their body. She thanked herself that she can escape by God's grace. She came down the tower and saw that there was a telephone booth near the Iskon Temple. She enquired from the booth about the time of the first bus which was going to Balasore. Someone pointed the first bus which had to leave for Balasore. She got up in the same bus and reached Balasore.

There was attack on her house with sharp cutting weapons and revolver. Fortunately, she was not present at Balasore on that day. On her reaching

Balasore, her mother told her that because of her disclosing the truth such attack was done. Her mother also told her that now there has been an attack and in future there may be threat to the life of her husband and child. That is why according to the version of her parents she lodged an FIR before the police. She was the eldest child of her family with her younger brothers. There was much family pressure on her. Threat was given that if she disclosed the truth there was risk to her life. Though initially she did not date to stay either yes or no before the CBI, ten days after her marriage she disclosed everything as her husband told her that nothing to be worried and asked her to tell the truth. As her husband cooperated her she disclosed everything.

At times CBI is investigating about the matter properly, but sometimes it is hiding the truth, the reason of which not known to her. They have suppressed many important things the reason of which was not known to her. Some CBI personnel are in her favour, one of such personnel is Mr. Aswini Kumar Sahaya who is a good officer and conducting the investigation properly. Otherwise the CBI personnel like both A.K. Salim Khan and Mr. Garg were trying to suppress the case even they had sold themselves.

11. The learned Counsel for the petitioner was called upon to satisfy this Court as to whether this Court can initiate a suo motu proceeding for criminal contempt in respect of the statements allegedly made by opposite party No. 1 in the year 1999 and 2001, in view of the period of limitation prescribed u/s 20 of the Contempt of Courts Act. The learned Counsel submitted that the report of interview in the electronic media has been published on 11th and 12th July, 2006 and this contempt petition has been filed within one year thereof, i.e. on 4.5.2007 and he urged that statement made by opposite party No. 1 in the interview constitutes the basis for criminal contempt.

12. Learned Counsel for the petitioner relied on a decision of the Supreme Court in the case of Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others, .

13. After considering the materials on record, the provisions of the Contempt of Courts Act and the decision of the Supreme Court in Zahira's case, this Court is constrained to hold that it cannot initiate any proceeding for contempt against opposite party No. 1 for the reasons discussed hereafter.

14. Most of the statements have allegedly been made by opposite party No. 1 either in the year 1999 or in 2001. Section 20 of the Contempt of Courts Act is a clear bar for initiation of any proceeding for criminal contempt in respect of those statements. The bar of Section 20 will not, however, apply to the statement of opposite party No. 1 which she is alleged to have made before the electronic media on 11th and 12th July, 2006 (Annexure-16). It is well known that in the matter of initiating proceeding for criminal contempt, the Court is to be extremely careful before initiating such a proceeding against any person. A contempt proceeding is not like an ordinary Us. It is an unusual type of

proceeding in which the "Jury, the Judge and the hangman" is combined in one. (See : Supreme Court Bar Association Vs. Union of India and Another,). Therefore, the Court must always be very careful in scrutinizing the materials on the basis of which it can initiate any suo motu proceeding for criminal contempt.

Criminal contempt" has been defined u/s 2 (C) of the said Act as follows:

2 (c) - "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which -

(i) scandalizes or tends to scandalize, 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 proceeding; or

(iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

15. The question is whether the statement tends to interfere with or obstructs the due course of judicial proceeding. The cognizance against the petitioner was taken by the Chief Judicial Magistrate on 3.7.2006 and the interview was allegedly given by opposite party No. 1 in electronic media on 11.7.2006. Therefore the act of taking cognizance by the Magistrate has nothing to do with the so called statement. Now the validity of the order taking cognizance has been challenged before this Hon"ble Court and the matter is pending adjudication before a learned Judge. Neither the Chief Judicial Magistrate nor this High Court can be swayed by any statement made in an electronic media. Judges are certainly human beings but they are definitely made of sterner stuff and decide the cases before them on the basis of materials on record and the relevant legal provisions. That is the essence of judicial discipline and that is why decisions of the Judges earn people's respect and people can repose faith in the system. Merely disowning of a statement by a party in the facts of this case does not and cannot tilt the balance in a Court.

16. Reliance on the judgment of Supreme Court in Zahira's case (supra) is rather misplaced in the facts of the case. In Zahira's case the facts are that after the acquittal of the accused by the Gujarat High Court, an application u/s 391 of the Criminal Procedure Code (hereinafter referred to as the "Code") was filed for accepting additional evidence and the foundation of that application was the statement by Zahira as an eye-witness to the case. As the High Court did not accept the prayer, appeals were filed before the Hon"ble Supreme Court. Zahira also made statements before National Human Rights Commission to the effect that she was threatened by powerful politicians not to depose against accused persons. The National Human Rights Commission also moved the Hon"ble Supreme Court under Article 32 of the Constitution. Zahira and others also filed SLP before the Hon"ble Supreme Court challenging the order of acquittal granted

by the Trial Court and which was affirmed by the High Court.

17. Statements were made by Zahira before the Hon''ble Supreme Court and on those statements and considering various other facts and law, the Hon''ble Supreme Court was pleased to set aside the orders of acquittal and also directed retrial of the case outside the State of Gujarat and under the jurisdiction of Bombay High Court. Various other directions were also given.

18. When the trial commenced, pursuant to the order of the Supreme Court, Zahira made a press statement that her statement before the Trial Court was correct. Then a petition was filed before the Supreme Court alleging contempt against Zahira. Hon''ble Supreme Court initially did not issue any order on the contempt petition but directed an enquiry to find out the truth since Zahira had changed her statement before a Court more than once. The matter was enquired into by the Supreme Court Registry and a report was submitted, inter alia, to the effect that change in the statement of Zahira was possibly the result of a lot of money changing hands. In that context, the Supreme Court held that Zahira has committed contempt of Court and Zahira was punished. In coming to its finding the Hon''ble Supreme Court held that the Contempt of Courts Act, 1971 "ipso facto" does not deal with the contempt jurisdiction of the Supreme Court except the procedural mode which is provided in Section 15. But the learned Judges held that the said Act applies only to High Courts.

19. In the instant case, the statement in the T.V. interview given by opposite party No. 1 obviously cannot be equated with the change of statement by Zahira and specially when we consider the same in the context of the report which was submitted in Zahira's case before Supreme Court about the circumstances, which brought about the change.

20. The statement before the electronic media (transcript vide Annexure-16) which is attributed to opposite party No. 1 does not in any way seek to scandalize the Court nor does it in any manner seek to lower the authority of any Court. Therefore, no case for suo motu initiation of contempt is made out against opposite party No. 1.

21. In coming to this conclusion, this Court is reminded of the guidelines given by the Supreme Court in the matter of exercising jurisdiction under Criminal Contempt in Dr. Prodip Kumar Biswas Vs. Subrata Das and Others, and the relevant guidelines at page 368 of the report are excerpted below:

The contempt of Court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the Act complained of adversely affects the majesty of law or dignity of the Courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law.

22. The learned Counsel did not press the case of Contempt against any other

opposite party.

This Contempt Petition is thus dismissed.

There will be no order as to costs.