

(1980) 02 AHC CK 0007

In the Allahabad High Court

Case No : Criminal Misc. Case No. 2124 of 1979 & Criminal Miscellaneous Case No. 2124 of 1979

Sanjay Gandhi

APPELLANT

Vs

V.D. Keshari

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Contempt of Courts Act, 1971 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 240

Citation : (1980) AWC 704

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : A.N. Trivedi and K.M.N. Chak, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This application has been moved for taking action against the Magistrate for contempt of the High Court and the Supreme, Court, the Petitioner is undergoing a prosecution and the Magistrate has framed charges against him u/s 240 of the Code of Criminal Procedure. It is alleged that he has in framing the charges not followed, or rather gone against, the judgment of this Court and the Supreme Court. The substance of the argument is that he has impliedly disobeyed the law laid down in various decisions of the High Court and the Supreme Court. The question therefore that arises is whether the framing of charges u/s 240 of the Code of Criminal Procedure without due regard to law declared through court decisions, and without discussing the rulings cited by the accused, can amount to civil contempt within the meaning of the Contempt of Courts Act.

2. Contempt has been defined in the Contempt of Courts Act, 1971 as meaning "Civil Contempt" or "Criminal Contempt". Civil Contempt and Criminal Contempt have been differently defined as under:

2. In this Act, unless the context otherwise requires--

(a)....

(b) "Civil Contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(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) scandalises or tends to scandalise, 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) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner....

3. Even if the allegation is taken on the face value that will mean that the action of the Magistrate tends to lower the authority of the higher courts. It may thus fall within Sub-clause (i) of Clause (c) of Section 2, but will not fall under Clause (b) which defines "civil contempt". In support of his contention that the disregard or passing the order against the law laid down by higher courts amount to civil contempt, the learned Counsel has relied on the decision of the Supreme Court in *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, . That was a case in which the court has to consider not the provisions of the Contempt of Courts Act, 1971, but of the Contempt of Courts Act 1952 in which the term "contempt" had not been defined and there was no bifurcation of "contempt into civil contempt and criminal contempt". It was in these circumstances that the Court considered that the wilful disregard of a High Court's judgment amounted to contempt, Paras 15-16 whereof make the point clear:

The conduct of the Appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. "Just as the disobedience of a specific order of the Court undermines the authority and the dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the

High Court generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law.

The decision in B. Misra's case (supra) does not lend support to the Petitioner's argument, but goes to show that a disregard to the rulings of higher courts will fall within the definition of "criminal contempt" and not "civil contempt".

4. It is not possible for me to take cognizance of this matter if it amounts to criminal contempt as the same is a matter cognizable by a Division Bench and an application for proceedings for criminal contempt can be moved either by the Advocate General or by a party with the consent in writing of the Advocate General. I am also not expressing any opinion as to whether the facts of the present case constitute criminal contempt. All I am holding is that it does not amount to "civil contempt".

5. The disobedience referred to in the definition of the civil contempt refers to the disobedience of a particular order, judgment or decree of a court. It does not refer to taking erroneous views of law or giving judgment which may not conform to the law laid down by higher courts in different judgments. u/s 240 of the Code of Criminal Procedure a Magistrate can frame charges if he, upon consideration of the matter and hearing the parties, is of opinion that there exist grounds for presuming that the accused had committed an offence triable under Chapter 19 which such Magistrate was competent to try. He had thus to take into consideration the particular facts arising in that case and then to apply law to these facts. He has thus to make a decision on the facts and the law presented before him. Making of such a decision for framing charges against an accused cannot amount, except when something special is shown in the form of an order from a higher court, to disobedience of any order, judgment or decree of a court. The conduct of the Magistrate, therefore, in framing the charges cannot amount to the commission of civil contempt as defined in the Contempt of Courts Act, 1971. The application accordingly fails and is dismissed.