
(2003) 12 JH CK 0059

In the Jharkhand High Court

Case No : Contempt Case (Cri) No. 10 of 2003

Shailesh Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Contempt of Courts Act, 1971 — Section 11, 12, 2
High Court of Jharkhand Rules, 2001 — Rule 398

Citation : (2004) 1 JCJR 57 : (2004) CriLJ 3030 : (2004) AIR Jhar HCR 1805 :
(2004) 17 AllIndCas 478 : (2004) 1 Crimes 218 : (2004) 2 CurCriR 128 : (2004)
1 JCR 1

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : V. Shivnath and H.K. Shikerwar, for the Appellant; Anil Kumar Sinha,
A.G., Samir Saurabh, Ajit Kumar and T. Mahto, for the Respondent

Judgement

P.K. Balasubramaniyan, C.J.

1.This is an application filed by a practicing Advocate of this Court under Sections 11 and 12 of the Contempt of Courts Act, 1971. According to the petitioner, on 21.8.2003 the party of which respondent No. 6 was the District President, had called for a Ranchi Bimdh. While he was coming to Court driving his own car to attend to his work, he was stopped on the way by 50 to 60 persons who surrounded the car and threatened him saying that if he breaks the bundh he will be finished. Four persons came up to the car shouting that he be burnt and one of them started to sprinkle some thing from a container on to the car with a view to set it. on fire. He was not allowed even to come out of the car. He was not allowed to take the car in reverse gear so that he could escape the threatened violence. The supporters of the bundh pounced upon the car and started attacking it with iron rods and sticks leading to the wind screen and the window panes being broken. Though, the petitioner saw a patrolling party of police men stationed near the place of the incident at Kokar Chowk, yet none of the police personnel took any steps to come to the rescue of the petitioner and to save his

property from the attack of the mob which consisted of persons who claimed to be the members of the political party that had called the bundh. He had lodged a First Information Report with the Senior Superintendent of Police about the incident and of the alleged attempt to kill him and the damage caused to his car in the presence of police personnel.

2. Respondents Nos. 1 to 5 in the petition are the State of Jharkhand and the police officials and respondent No. 6 is the District President of a political party which had allegedly called for the bundh. According to the petitioner, contempt of Court has been committed by those belonging to the party represented by respondent No. 6, since they had called a bundh and enforced it. Thus, committing contempt of the decision of the Supreme Court in *Communist Party of India (M) v. Bharat Kumar and Ors.*, 1998 (1) SCC 2001. His further case is that he being an officer of Court, obstructing him from performing his duties as an Advocate by appearing in Court, amounts to obstructing the course of justice and consequently the commission of a criminal contempt as defined in the Contempt of Courts Act. Thus, two aspects were put forward, first commission of civil contempt by disobeying the decision of the Supreme Court and criminal contempt by obstructing the performance of duties by a lawyer, amounting to obstructing the course of justice.

3. In the affidavits filed, respondent No. 1 to 5 have conceded that a bundh was called for on 21.8.2003 and it was held. But they pleaded that they had taken all possible steps to meet the situation arising out of calling for the bundh and they had done their best to ensure that there was no violence during the bundh or any illegal obstruction to others caused by the supporters of the bundh. They submit that the complaint filed by the petitioner was registered and investigation is going on and they are not guilty of either civil contempt or of criminal contempt as alleged by the petitioner. They have denied the allegation of inaction on their part and attempted to say that at or about the spot where the incident allegedly took place, there was no police party as claimed by the petitioner. But as it appears from the materials furnished by them there was a police party in the vicinity as per the directions issued for deployment of forces on that day.

4. Respondent No. 6 submits that his son had been murdered, the previous day and he was busy consoling his wife, making arrangements for the funeral and meeting various persons who had called on the family on hearing the news of the death of his son. He had not called a bundh. He contended that he was not responsible for the bundh. He had not obstructed the petitioner and that he was not a member of the alleged mob. In fact, he was trying to ensure that there was no coercion practised or any violence, unleashed on the pedestrians and the common men using the street. He thus, denied that he had committed any Contempt of Court.

5. After the decision of the *Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others*, affirmed by the Supreme Court in the decision above referred to, there cannot be much doubt that the calling of a bundh and enforcing it by

holding out threat either express or implied, is an unconstitutional act and is an interfere with the freedom of another citizen to practice his profession, to carry on his avocation or to go about his business. Therefore, by calling for a bundh in the teeth of the declaration of law by the Supreme Court, the organization that called for the bundh and those who sought to enforce it on its behalf, are guilty of contempt of the direction of the Supreme Court. Why, inspite of the declaration of law by the Supreme Court, political parties, like the one represented by respondent No. 6 should call for a bundh is something that is beyond one's comprehension. As responsible leaders of political parties, supposed to be participants in the democratic process of the country, the leaders of these political parties, owe a duty to themselves, the State and the nation and to their fellow citizens to desist from calling for a bundh which by itself holds out a threat of violence to their fellow citizens as they are warned of the consequence of not participating in the bundh. Why should they paralyse the activities of the town, the State or the nation? It is time that those in power and those who aspire for it ensure that such destructive methods of demonstrating their protest are not resorted to. It behoves the State and its officials to take appropriate action against those who are guilty of going against the declaration of law by the Supreme Court and who continue to breach the constitutional rights of others. Destruction of property by the supporters of the bundh should also be dealt with strongly by the State as has been held in the judgment of the Kerala High Court affirmed by the Supreme Court. One would expect respondent No. 1 to institute the necessary action against the party organizations responsible for the bundh for recovery of damages suffered by the State and the citizens whose properties have been attacked by the supporters of the bundh.

6. As far as this State is concerned, the unfortunate fact is that bundhs are resorted to with such frequency that one can say roughly that unless there is a bundh a month, some of the political parties would not be happy during these bundhs violence is let loose and the properties of the Central Government and the Railways are attacked. Railway Stations are set on fire or dynamited and Railway lines are dismantled without any compunction. Trains and Rail passengers are attacked and damages caused. But no steps are taken by the Railways or by the Union of India to take action against these miscreants for recovery of compensation for the loss suffered by the Railways and compensation for deprivation of use of Railways at least temporarily by the citizens of the country. Same is the position with properties of the State. We direct the State Government and the Union of India to initiate action without fail for recovery of damages from the organization that calls for a bundh and whose supporters indulge in destruction of public property. Only such action can act as a deterrent to those who blatantly violate the Constitution and the fundamental rights of others. In Ranchi Bar Association, Ranchi and Another Vs. State of Bihar and Others, a Division Bench of this Court, following the decision of the Supreme Court and the decision of the Kerala High Court referred to above, held that where the supporters of the bundh forced the closure of the Court, interfered

with its working and prevented unlawfully the lawyers from attending to their cases, it was a case of Contempt of Court and the supporters of the bundh would be guilty of contempt. Based on this, it was argued by learned counsel for the petitioner that the preventing of the petitioner from attending Court and from attending to his work amounts to obstructing the course of justice and that amounts to Criminal Contempt as define in Section 2(c) of the Contempt of Courts Act. It is also submitted that it may even amount to interfering with the due course of a judicial proceeding and on that basis also it would come within the definition of Criminal Contempt. The argument on behalf of petitioner is that on the admitted facts he was prevented from attending the Court and those who are guilty must be held to be guilty of contempt of Court. Respondent No 6 in his show cause has stated that he had not been part of any association of persons obstructing the petitioner and, therefore, he should not be held guilty of Contempt of Court. There is no specific allegation in the Contempt of Court application about the role of respondent No. 6 except the allegation that he had called for the bundh. He has admitted that he was the District Office Bearer of a political party, the Jharkhand Mukti Morcha. But he has denied that he had given the call for a Ranchi bundh. According to him, on the night of 19.8.2003 his eldest son and another person were murdered by some miscreants and the funeral was held on 20.8.2003 in "ashmasanghat" He remained with the family consoling his family members including the children of his murdered son and his widow. He was wholly involved in consoling the entire family and had also to arrange for the performance of the rites after death. He denied that he had ever called for any bundh on 22.8.2003. No such decision was also taken by the District Committee and if such decision was taken by that Committee he had no knowledge of it. He had no occasion to convene any meeting for taking a decision to call for a bundh in view of the murder of his son. According to him, from the news papers it was revealed that several political parties had called for a bundh for attracting the attention of the administration or the Government, to the deplorable law and order situation in Ranchi resulting in murders, dacoity and other crimes. He denied that the incident referred to was perpetrated by the members of the Jharkhand Mukti Morcha and those persons who were identified and apprehended by the police were the members of other political parties who were interested only in blaming the Jharkhand Mukti Morcha on all possible occasions and for all possible omission and commissions. He submitted that the contempt application is not maintainable. He also submitted that he held the Court in great esteem and he held the petitioner in high esteem and he has also tendered an unqualified apology before this Court if by any reckoning he was found to be guilty of any omission, or commission.

7. From the pleadings it is clear that some incident did take place involving the petitioner and his vehicle. He had lodged a complaint and the complaint has been taken on file and according to the police, it is being investigated. Much argument is not needed for holding that violating the direction of the Supreme Court, declaring that bundh is unconstitutional and giving a call for a bundh and

enforcing it amounts to Contempt of Court. It is clear that a political party which calls for a bundh and enforces it would be guilty of Contempt of Court. In the case on hand, respondent No. 6 has denied that he had called a bundh. The news paper cutting relied on by the petitioner suggests that various parties were involved in the bundh called in connection with the murder of the son of respondent No. 6 and another. In this situation, learned counsel for the petitioner argued that the matter requires evidence as contemplated by Rule 398 of the High Court Rules.

8. We may notice here that the petitioner has not impleaded any of the persons who were allegedly directly involved in obstructing him from coming to Court to perform his duties as an Advocate. He has also not named any of those persons who were directly involved in obstructing him or in damaging his car or in threatening him with violence, in the petition for taking contempt action. A Contempt of Courts proceeding in quasi- criminal in nature arid unless specific details are supplied, it may not be possible for a Court to embark upon an investigation into the alleged obstruction of the course of justice. We feel that there is no adequate pleading in the petition justifying a trial of the Contempt of Court alleged in so far as it relates to the charge of Criminal Contempt. It was argued on behalf of the respondents that there was no adequate pleading justifying the proceeding against any one of the respondents for alleged Contempt of Court. We are inclined to agree with this submission. Moreover, we find that the petitioner has already set the criminal law in motion regarding the obstruction caused to him and the damage allegedly caused to his car. Respondents 1 to 5 have pleaded that a case has been registered and investigation is going on and appropriate steps will be taken after the investigations completed. We think that it would not be appropriate to decide the question whether any one of the respondents is guilty of Criminal Contempt, since that would have a clear bearing on the criminal case that has been launched by the petitioner himself. In this situation, we do not think that it would be appropriate to embark upon an enquiry under Rule 398 of the High Court Rules at this stage. We think that the proper course to adopt is to leave the petitioner to prosecute the criminal proceeding that he has initiated and if it is permissible, to move this Court for taking action under the Contempt of Courts Act after the prosecution is completed. Reserving such a liberty in the petitioner, we think that the present proceeding for Criminal Contempt of Court should not be continued now.

9. As regards the Civil Contempt, those who have called for the bundh against the terms of the decision of the Supreme Court, declaring such act as unconstitutional and sought to enforce it, would be guilty of contempt. Respondent No. 6 would be guilty of it, if it is proved that he had called for it and exhorted his followers to enforce it. There is no adequate material now available on that aspect. We have felt it proper to leave the petitioner to prosecute his criminal complaint. We are of the view that the proper thing now to do is to restrain the organization represented by respondent No. 6 from indulging in such

unconstitutional and destructive acts. The organization represented by respondent No. 6 is hereby restrained from calling for a bundh or hold-ing it in the State, since it does not appear to be conscious of the fact if it violates the directives of the Supreme Court, it would be guilty of Contempt of Court and of breaching the constitution, which we have given unto ourselves. In that context we think it appropriate to issue the injunction as indicated above. We also think that in the circumstances, that would be more practical and would be more to the purpose than imposing a sentence on those who have called for the bundh after determining who had in fact done it.

10. There is a clear duty in the Union Government and the State Government to initiate action for recovery of damages from those parties or organizations that call for bundhs, enforce them resulting in loss of public property and loss of production. This duty is seldom seem performed. We, therefore, direct the Union of India and the State to initiate steps for recovery of damages against those calling for bundhs and recover it from the assets of those organizations or parties and from the properties of their office bearers, This direction, if implemented properly, will result in the putting down of the menace to progress and the obstruction to the forward march of this great nation.

11. We, therefore, drop this proceed ing reserving liberty in the petitioner to initiate a proceeding under the Contempt of Courts Act after the criminal prosecution is completed, if it is permissible in law. We issue an injunction restraining the party represented by respondent No. 6 and of which he is an officer bearer, from calling for bundhs and enforcing them in the State and from violating the Constitution and the fundamental rights of the citizens at large. We direct the Union of India and the State Government to initiate action for recovery of damages for destruction of property and loss of production whenever they occur by the holding of bundhs from the assets of the organizations or political parties that call for the bundh and from those of their office bearers.