

(2018) 07 BOM CK 0090

In the Bombay High Court

Case No : Criminal Writ Petition No.614, 615 of 2015

Smt. Anagha Anil Muley & ors.Vs Concerned Presiding Officer, Ms. A.L. Gujar and Another

Date of Decision : 23-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 193, 420, 468, 471
Code of Criminal Procedure, 1973 — Section 457

Citation : (2018) 07 BOM CK 0090

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : P.D. Dubey, A.M. Kukday, U.V. Gaikwad

Final Decision : Dismissed

Judgement

1. These writ petitions have been filed by the original accused, being aggrieved by the orders passed by the Court of Additional Sessions Judge,

Nagpur, rejecting applications filed by the petitioners for taking action for contempt of Court against the respondents.Â The respondents herein, in

Criminal Writ Petition No. 615 of 2014, are the Magistrate and the original complainant while in Criminal Writ Petition No.615 of 2015, the

respondents are the Magistrate, the husband of the original complainant and the Advocate representing the original complainant.Â According to the

petitioners, the Magistrates who are arrayed as respondents, committed contempt by disobeying specific direction given by the Court of Additional

Sessions Judge, Nagpur, while remanding complaints filed by the respondent-complainant and further on the ground that statement of verification of

the original complainant was recorded by the Clerk of the Magistrate and not by the Magistrate herself, wherein husband of the respondent-

complainant and the Advocate representing the complainant were also involved.

2. The respondent-complainant Sujata Jaywant Kawalkar had filed a private criminal complaint bearing Regular Complaint Case No. 762 of

2007 in the Court of the Judicial Magistrate First Class, Nagpur, wherein the petitioners were arrayed as accused for offences punishable under

Sections 468, 471, 420, 193 and 120-B of the Indian Penal Code (IPC). On 25.05.2007, the Court of Judicial Magistrate First Class issued process

against the petitioners for offences punishable under Sections 420 and 120-B of the IPC. Aggrieved by the same, the petitioners preferred two

revision petitions before the Sessions Court. By a common judgment and order dated 12.11.2007, the Court of Additional Sessions Judge, Nagpur,

partly allowed the revision petitions, set aside the aforesaid order dated 25.05.2007 passed by the Magistrate and remanded the complaint back to the

Court of Magistrate for proceeding from the stage of verification.

3. Thereafter on 25.6.2008, on the Roznama of the Court of the Magistrate, the following noting was recorded in respect of the said complaint:

Complainant and his counsel are present.

Accused No.1 and his counsel are present.

Accused No.6 is already discharged. Exh.13- Application for grant of adjournment filed by complainant, granted.

Exh.14- Pursis filed by counsel for accused No.1. Seen and filed. Issue summons to accused No. 2 to 5 on P.F.

Case adjourned for verification/R/s to accused No. 2 to 5.

4. The petitioners filed Misc. Criminal Application No. 1774 of 2008 before the Sessions Court, Nagpur, claiming that the aforesaid noting in the

Rozanama was an order passed by the Magistrate in clear violation and disobedience of the common judgment and order dated 12.11.2007 passed by

the Court of Additional Sessions Judge, Nagpur, whereby specific direction was given that the Magistrate was to proceed from the stage of

verification. According to the petitioners, the concerned Magistrate, by passing the order dated 25.06.2008 in the Roznama, had issued summons to

the accused i.e. the petitioners while adjourning the case for verification. It was the case of the petitioners that when a specific direction had been

given by the court of Additional Sessions Judge, in its judgment and order dated 12.11.2007 to first record verification and then to proceed, by issuing

summons to the petitioners without undertaking the exercise of verification, the

concerned Magistrate had committed criminal contempt of the Sessions Court.

5. The petitioners also made an allegation against the Magistrate that on 07.08.2008 the concerned Clerk of the Court of Magistrate had recorded statement of the husband of the respondent-complainant in the name of the complainant in a room adjoining the Court room of the Magistrate and that the respondent-complainant was sitting quietly on a chair near another table. It was claimed by the petitioners that an agent of the society of which the petitioners were office bearers had seen from a window that such statement was being recorded by the Clerk and not the Magistrate. This , according to the petitioners, was another act of gross criminal contempt by the Magistrate in connivance with the respondent-complainant.

6. Upon notice being issued on the said application, it came on record that on 25.06.2008, when the aforesaid recording was made in the Roznama, the Magistrate who was arrayed as alleged contemner in Misc. Criminal Application No. 1774 of 2008, was not presiding over the Court and that there was another Magistrate (respondent no.1 in Criminal Writ Petition No. 615 of 2015) who was the Presiding Officer. On this basis, Misc. Criminal Application No. 1672 of 2009 was moved by the petitioners arraying the said Magistrate (respondent no.1 in Criminal Writ Petition No. 615 of 2015) as an alleged contemner, for having passed the order on 25.06.2008, as reflected in the Roznama.

7. During the pendency of the said applications moved by the petitioners for initiating contempt proceedings, further applications were moved by them for issuing specific show cause notice to the aforesaid two Magistrates. It was claimed by the petitioners that the respondent-complainant had not responded to the notice issued by the Sessions Court and, therefore, it was necessary that the Magistrates were asked to show cause as to why contempt action be not taken against them. The Court of Additional Sessions Judge, Nagpur, passed orders on 07.07.2015 and 10.07.2015 rejecting the said applications filed by the petitioners. The Court only sought remarks from the Magistrate arrayed as respondent no.1 in Criminal Writ Petition No. 615 of 2015. At this stage, on 29.07.2015 the petitioners filed the present two writ petitions, praying for orders dated 07.07.2015 and 10.07.2015 passed by the Court of Additional Sessions Judge, Nagpur, to be set

aside and to stay the proceedings before the Court below till the writ petitions were finally disposed of, as certain issues pertaining to applicability of various provisions of the Contempt of Courts Act, 1971 and the Rules framed thereunder, were raised in the writ petitions.Â As only notice was issued by this Court in these two writ petitions and no interim order was granted, by common order dated 05.08.2015, the Court of Additional Sessions Judge, Nagpur, finally decided and dismissed both the applications filed by the petitioners for taking contempt action against the respondents.Â By way of amendment, the petitioners challenged the said common order dated 05.08.2015 passed by the said Court.

8. Mr. P.D. Dubey, learned counsel appearing for the petitioners, contended that the Court below had committed a grave error in dismissing the applications filed by the petitioners and in holding that the present case and its facts did not constitute any criminal contempt as defined in Section 2Â (c) of the said Act.Â It was further contended that the finding of the Court below that since the present case concerned allegations amounting to civil contempt as defined under Section 2(b) of the said Act, no reference could be made to this Court, was wholly erroneous and that it was based on improper appreciation of the facts as well as law.Â It was contended that the order passed on 25.06.2008 by the Magistrate was clearly in contempt of the common judgment and order dated 12.11.2007 passed by the Sessions Court.Â It was further contended that the act of recording statement of husband of the respondent-complainant by Clerk of the concerned MagistrateÂ on 07.08.2008 was also an act of criminal contempt for which the respondents/alleged contemnors deserved to be punished.Â It was contended by the learned counsel for the petitioners that the impugned common order dated 05.08.2015 deserved to be set aside and that the matter was required to be remanded to the Sessions Court for recording of evidence and to take contempt action against the respondents.

9. Per contra, Mr. U.V. Gaikwad, learned counsel appearing on behalf of the respondent-complainant, submitted that the petitioners have been in the habit of filing numerous applications and proceedings before the Courts below only with the intention of delaying proceedings in original complaint bearing Regular Complaint Case No. 762 of 2007 filed by the respondent-complainant.Â It was submitted that the complaint was filed 11 years ago

and yet it was still at preliminary stage, because of one or the other application or proceeding filed on behalf of the petitioners, in order to frustrate the criminal complaint filed by the respondent-complainant.Â It was submitted that there was sufficient material on record to show that the recording in the Roznama dated 25.06.2008 was not an order of the Court and that it was merely a noting made mistakenly by the Court Clerk, which became clear from the facts brought on record subsequently. The Magistrate had called for an explanation from the Clerk as to why such a recording was made.Â It was submitted that the said noting dated 25.06.2008 in the Roznama was not an order by the Court of MagistrateÂ and that it could not be said that it was an order in contempt of the common judgment and order dated 12.11.2007 passed by the Court of Additional Sessions Judge while remanding the complaint.Â As regards the allegation that the statement of verification was recorded by theÂ Clerk of the Magistrate and that the statement was not made by the original complainant but her husband, it was submitted that there was an affidavit filed by the concerned Magistrate (respondent no.1 in Criminal Writ Petition No. 614 of 2015) to the effect that the statement of verification was recorded by her personally and that the respondent-complainant had made the statement on oath.Â It was submitted that with this material on record, the Court below was fully justified in dismissing the applications filed by the petitioners by common order dated 05.08.2015.Â It was submitted that there was no error committed in the impugned common order wherein it was held that the present facts did not show any case of criminal contempt as defined under Section 2(c) of the aforesaid Act.

10. Heard counsel for the parties and perused the record.Â The facts as they emerge from the record are that while process was issued against the petitioners by the Magistrate by order dated 25.05.2007, the said order was set aside by the Court of Additional Sessions Judge, Nagpur, by common judgment and order dated 12.11.2007.Â The said Court remanded the matter to the Magistrate for proceeding from the stage of verification.Â The record shows that after the complaint was remanded by the Court of Additional Sessions Judge, it was posted for recording of verification of the respondent-complainant. On 25.06.2008, the Roznama sheet has recorded the noting, which has been quoted above.Â The contention raised on behalf

of the petitioners is that the aforesaid noting was an order passed by the Magistrate issuing summons to the petitioners (accused) even when

verification of the respondent-complainant was not recorded. This, according to the petitioners, was in clear contempt of the common judgment and

order dated

12.11.2007, whereby the complaint was remanded to the Magistrate to proceed from the stage of verification.

11. The record also shows that the Magistrate arrayed as respondent no.1 in Criminal Writ Petition No. 614 of 2015 was not presiding over the Court

of Magistrate on 25.06.2008 and it was in fact the Magistrate arrayed as respondent no.1 in Criminal Writ Petition No. 615 of 2015 who was presiding

on that day. The Sessions Court had called for remarks from the said Magistrate who was officiating on 25.06.2008 as to the aforesaid noting in the

Rozanama. The Magistrate on 29.01.2010 made submission in the form of remarks before the Sessions Court and stated that on the said date i.e.

25.06.2008, a pursis was filed by the Advocate appearing on behalf of the accused No.1 Kishor Bawane and the Advocate was heard. It was

further stated that the respondent-complainant had moved an application for adjournment as his Advocate was unable to attend, further stating that

except for the said two applications, no further steps were taken in the file of the said complaint and that the matter was posted for verification on

future date. It was pointed out that even on earlier dates as recorded in the Roznama, the complaint was posted for verification of the complainant,

as directed by the Sessions Court while remanding the complaint. It has further come on record that the Bench Clerk of the Court of the said

Magistrate was busy with inspection in progress in Court No.2, due to which Junior Clerk handled the file of the complaint and the said Junior Clerk

made the aforesaid noting in the Roznama on 25.06.2008. It was clear that the Clerk mistakenly noted that summons were issued to the petitioners

(accused) while recording at the same time that the case was adjourned for verification. It was also revealed from the record that no steps were

taken to issue summons to the petitioners (accused) as the verification was pending and that the Magistrate (respondent no.1 in Criminal Writ Petition

No. 614 of 2015) had issued notice to the said Junior Clerk to give an explanation for making the aforesaid noting dated 25.06.2008 in the Roznama of

the complaint.Â These facts have been noted by the Court of Additional Sessions Judge in the impugned common order dated 05.08.2015.

12. In this context, it would beÂ appropriate to refer to judgment passed by this Court in the case of Ratnamala Shivkumar Bajpai .vs. Sujata Jaywant

Kawalkar â?" 2017 ALL MR (Cri) 4748 ,which has been relied upon by the learned counsel appearing on behalf of the respondent.Â It is significant

that the said reported judgment of this Court was delivered in a petition arising between the same parties from the very same complaint bearing

Regular Criminal Case No. 762 of 2007 filed by the respondent-claimant against the petitioners.Â In the said judgment, in the context of notings in

Roznama, it has been held as follows:-

â??4.Â Â On going through the order dated 1.10.2016 the order impugned herein, as well as order dated 25.6.2008, I find that the impugned order

cannot be equated with the socalled order passed on 25.6.2008. The impugned order is in terms , ""Issue process against accused no. 1 to 5 for

Sections 120 (B), 468, 471 IPC"" passed below exhibit 1 ""whereas the so-called order dated 25.6.2008 is to the effect ""Issue summons to accused no. 2

to 5 on P.F."" made in the order-sheet or roznama dated 25.6.2008. This so-called order dated 25.6.2008 is actually in the nature of a noting taken in

the order-sheet, which is admittedly signed by the learned Magistrate. A noting taken in the order- sheet is a reflection of happenings in the Court and

ordersheet is a mirror of what has happened and what has been transacted as a court business and if there is no order passed as a part of court

business, whatever noting taken in the order-sheet or roznama, cannot be considered as equivalent to order of the Court. However, learned counsel

for the petitioners does not agree with this proposition although it is a settled one. He has tried to support his disagreement by referring to the judgment

rendered by the Patna High Court in the case of Nand Kumar Sinha v. Emperor reported in AIR 1937, Patna, 534. In this case, the Patna High Court

has held that an order-sheet being record of the act of judicial officer, is a ""public document"" and the presumption is that it is genuine. There can be no

two opinions about this proposition of law. An order-sheet is certainly a public document and it is also the record of an act of a public judicial officer

and, therefore, a presumption that it is genuine, though rebuttable, would always be attached to it. This is what I have held while discussing about the

settled principle of law laying down that the order-sheet is only a mirror of various acts of a public judicial officer which view is also found to be taken

by the Patna High Court. Therefore, this case instead of supporting the case of the petitioners, would strengthen the case of the respondent. It is an

admitted fact that no order issuing summons to the accused persons (petitioners), though noted in the order-sheet of 25.6.2008, finds place below

exhibit 1 or on any other application or document forming part of record of the court. Thus, a noting taken in the order-sheet could not be considered

as the order of the Court itself.â??

13. The aforesaid position of law makes it clear that the noting dated 25.06.2008 made in the Roznama of the Court of Magistrate pertaining to the

said complaint was only a reflection of happenings in the Court and that it could not be considered equivalent to an order of the Court.Â It is

significant that the said position of law was enunciated by this Court in respect of the very same noting dated 25.06.2008, in the said complaint filed by

the respondent-complainant against the petitioners. Apart from this, the record shows the manner in which the noting dated 25.06.2008 came to be

recorded in the Roznama and that the fact that summons were never issued and further that the Magistrate issued notice and sought an explanation

from the Junior clerk who made the noting.Â This goes to show that there was no question of any disobedience by the Magistrate of the common

judgment and order dated 12.11.2007 passed by the Sessions Court while remanding the complaint.Â The Court of Additional Sessions Judge has

correctly analysed the facts and the position of law in the impugned common order dated 05.08.2015, while holding that the said noting dated

25.06.2008 made in the Roznama of the complaint could not be the basis of initiatingÂ contempt action against the respondents.

14. As regards the other grievance raised on behalf of the petitioners that verification statement was recorded by Clerk of the Magistrate and that the

husband of the respondent-complainant made the statement on oath, thereby showing that criminal contempt was committed by the respondent, the

Court below has taken into consideration an affidavit placed on record by the concerned Magistrate wherein it has been clearly stated that the

verification of the respondent-complainant was recorded by her as per law and it was only reduced in writing by the Clerk.Â The record also

demonstrates that the respondent-claimant had signed her verification statement after she was examined in the witness box.Â The Court of

Additional Sessions Judge in the common impugned order dated 05.08.2015 has correctly recorded that in the face of such an affidavit filed by the

concerned Magistrate, it could not be said that there was any ground for initiating contempt action against the Magistrate or the other respondents.Â

This has to be appreciated in the context of the entire material on record, which gives an unmistakable impression that the petitioners have made the

said allegation against the Magistrate only with a view to overawe her and to delay the proceedings.Â The allegation made by the petitioners that an

agent of their society saw from a window that verification was being recorded by clerk of Magistrate, is wholly without credence.Â But, the

proceedings in the complaint have been stalled on such allegations since the year 2008.Â

15. In a judgment of a Division Bench of this Court in the case of Anjana D. Sawant .vs. Baba Abdul Khan - 2004 (1) Bom C.R. 812, it has been held

as follows:-

â??18.Â Â However, it is no doubt true that when it is said that the Judge had a predisposition to convict or deliberately took a turn in discussion of

evidence because he had already resolved to convict the accused, or is attributing motives, lack of dispassionate and objective approach and analysis

and prejudging of the issues which would bring administration of justice into ridicule if not infamy. When there is a danger of grave mischief being

done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity, if the criticism is likely to

interfere with due administration of justice or undermine the confidence which the public rightly repose in the courts of law as courts of justice. The

statutory law or the Constitution does not confer a right on persons to level serious allegations against the Judge of impropriety/motive, lack of

dispassionate approach, prejudging the issues etc., without substantial and cogent evidence in this regard. Otherwise, the person making such

allegations would undoubtedly be committing a criminal contempt.

19. â?|..

20. â?|..

21. In the instant case, the appellantbeing a Judicial Officer of the Court was

discharging judicial functions and exercising power conferred on her under Section 457 of the Criminal Procedure Code. The observations of the Apex Court in the order, dated 21/9/1992, clearly show that the appellant, in view of the changed circumstance, i.e. filing of chargesheet, was expected to consider the issue of handing over of property to the respondent no.4 on Supratnama. All earlier orders in this regard stand superseded by the last order of the Apex Court and, therefore, the question of disobedience of those orders does not arise. Even otherwise, when the Judge is discharging his judicial functions and the order passed by him is appealable or revisable, he/she cannot be prosecuted under the provisions of Contempt of Courts Act, and is completely protected from such prosecutions. The discretion exercised and the finding arrived at by the learned Judge in a given case may be right or wrong, but that does not give rise to the prosecution of such Judicial Officer under the provisions of Contempt of Courts Act. It is, no doubt, true that the Judiciary enjoys prestige of highest order and slightest disrespect shown to Judiciary and disregard to its Judgment and order amounts to contempt of court punishable under the prevailing law of Contempt of Court. Similarly, rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remains true to the spirit with which they are sacredly entrusted to, the dignity and the authority of the courts have to be respected and protected at all cost. It is for this purpose that the Courts are entrusted with the extraordinary power of punishing those who indulge in acts, whether inside or outside the Court, which tend to undermine their authority and bring them in disrepute by scandalising them and obstructing them from discharging their duties without fear and favour. We must remember that the power of contempt must be used sparingly and only in a situation which warrants such exercise. These are summary proceedings and the Court can convict the contemnor by conducting a summary trial. In the instant case, the learned Single Judge has given a go bye to all these established norms and convicted a Judicial Officer for civil contempt on the misconception of law and facts.â??

16. The aforesaid position of law makes it clear that allegations against Judicial Officers discharging judicial functions cannot be made lightly and that when orders passed by such Judicial Officers are subject to appeal/revision, such

Judicial Officer cannot be prosecuted under the provisions of the Contempt of Courts Act, 1971. In the present case, the petitioners have made allegations against the two Magistrates very lightly and without any substantial material against them. The allegations have been made to claim that the Magistrates were guilty of criminal contempt as defined under Section 2(c) of the said Act. Nothing can be farther from the truth.

17. The learned counsel appearing for the petitioners has sought to argue that the Court of Additional Sessions Judge, in the common impugned order dated 05.08.2015 committed a grave error by observing that since the present case fell in the ambit of civil contempt, there was no provision to make reference to this Court as under Section 15(2) of the said Act, a reference could be made only for alleged criminal contempt. This Court does not propose to go into the said question, because the record and available material demonstrates that no case of contempt either civil or criminal is made out against the respondents and that the Court of Additional Sessions Judge, correctly dismissed the applications of the petitioners by the common impugned order dated 05.08.2015.

18. It is indeed demonstrated by the facts of the present case that the respondent-complainant had filed the criminal complaint bearing Regular Criminal Case No. 762 of 2007, against the petitioners about 11 years ago. The said complaint is pending before the Court of Magistrate at preliminary stage even after passage of such a long period of time. The petitioners have been filing applications and proceedings repeatedly to delay the progress of the criminal complaint filed by the respondent-complainant. Although, the right of the petitioners (accused) to avail of remedies available in law cannot be denied, the filing of applications for initiating criminal contempt action against the respondents, including the Magistrates on wild allegations, was nothing but an attempt by the petitioners to overawe the Magistrates and the respondent-complainant in another attempt to delay the proceedings in the original criminal complaint filed by the respondent-complainant. It appears that the petitioners wish to delay the proceedings in the original criminal complaint as much as they can. On a pointed query put to the counsel for the parties as to whether any interim order had been passed by any Court and whether it was operating insofar as the said criminal complaint was concerned, the counsel could not provide any

definite information. The facts of the present case demonstrate that an order for expeditious disposal of the aforesaid criminal complaint filed by the respondent-complainant is warranted in the present case.

19. The writ petitions filed by the petitioners are found to be without any merit and accordingly they are dismissed.Â The proceedings in criminal

complaint bearing Regular Criminal Case No. 762 of 2007 initiated by the respondent-complainant and pending before the Court of Judicial Magistrate

First Class, Nagpur, are expeditedÂ and it is directed that the said complaint shall be decided by the concerned Court within a period of one year

from today.