
(1988) 03 OHC CK 0001
In the Orissa High Court

State of Orissa

APPELLANT

Vs

M.S. Jaggi

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Contempt of Courts Act, 1971 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) CriLJ 1598

Hon'ble Judges : H.L. Agrawal, C.J.;A.K. Padhi, J

Bench : Division Bench

Judgement

H.L. Agrawal, C.J.—Whether the allegations made by the opposite party M.S. Jaggi would constitute contempt of Court is the question which falls for our decision.

2. The facts:

The contemner was a party in two Criminal Revisions filed in this Court. He was petitioner in Criminal Revision No. 558 of 1979 and opposite party in Criminal Revision No. 432 of 1979. In both the revisions, the contemner's adversary was Subash Chandra Mohapatra.

On 29-4-1980 Criminal Revision No. 432 of 1979 (in which the contemner was opposite party) was taken up for hearing by J. K. Mohanty, J. (as be then was) when the contemner had appeared in person to argue the case. Hearing was concluded and the case was reserved for judgment.

Criminal Revision No. 558 of 1979 in which the contemner was the petitioner was taken up for admission by Justice Mohanty on 14-5-1980. On that day the contemner orally told the Judge not to take up the revision as his adversary Subash Chandra Mohapatra happened to be related to the Hon"ble Judge inasmuch as the mother-in-law of the Judge and the wife of the elder brother of Subash Chandra Mohapatra were sisters and particulary when the Hon"ble Judge was residing in the house of his father-in-law right from the time of his marriage.

Notwithstanding the above conduct of the contemner, the learned Judge took up the case for admission which was dismissed with liberty to the petitioner to move again after disposal of the criminal case and the contemner was asked to file an affidavit supporting his above allegations.

3. On 15-5-1980, when Criminal Revision No. 432 of 1979 was still pending for delivery of the judgment, the contemner filed an affidavit praying for transfer of the case to the Court of some other Hon"ble Judge. The affidavit read as follows:

1. That the opposite party yesterday came to know the relationship of your Lordship with the petitioner and accordingly he mentioned before your Lordship when his Criminal Revision No. 558 of 1979 came up for admission yesterday.

2. That it would be proper in the interest of justice that your Lordship may be graciously pleased to transfer the file of the Criminal Revision No. 432 of 1979 to any other Hon"ble Judge of this Hon"ble Court ... apprehends that some injustice may be done to him....

The learned Judge on 16-5-1980 passed an order to the following effect:

After the matter was finally heard an affidavit has been filed now that the petitioner is a relation of the Court. This objection was never raised at any time. The statement in the affidavit is not correct. Place before Hon"ble the Chief Justice for taking appropriate action.

4. On the basis of the above order and in accordance with the Orissa High Court Rules, the matter was placed before the Court on the administrative side and it was decided to draw up a proceeding for contempt against the contemner.

In view of the denial made by Justice Mohanty of the alleged relationship in his order dated 16-5-1980, the contemner filed another petition on 21-5-1980 in Criminal Revision No. 558 of 1979 labelling it u/s 482, Cr. P.C. purporting to clarify the relationship between the Judge and Subash Chandra Mohapatra. The portion of that petition reads as follows:

2. That on 16-5-80 your Lordship in the Criminal Revision No. 558 of 1979 which came up for orders directed with the observation on the affidavit of the petitioner and also your Lordship denied the relationship of the opposite party to which the petitioner is clarifying your Lordship's relationship with the opposite party:

Subash Chandra Mohapatra is the younger brother of Sarat Chandra Mohapatra whose wife and the mother-in-law of your Lordship are sisters and they are on very good terms with each other and since your Lordship has been staying in the house of your Lordship's mother-in-law almost from the date of marriage, the petitioner as opposite party in the Criminal Revision No. 432 of 79 filed an affidavit on 15-5-80 and also mentioned before your Lordship on 14-5-80 in the interest of justice in his case.

When the contemner reiterated the relationship, Justice Mohanty again passed an order on 11-7-1980 denying the relationship and stating that the sister-in-law

of Subash Chandra Mohapatra was not known to him; rather he had not even seen her. The order reads as follows:

..It is now alleged by the petitioner that the opposite party is the younger brother of one Sarat Chandra Mohapatra whose wife and my mother-in-law are sisters and they are On very good terms with each other, etc.

To my knowledge, my mother-in-law had two sisters; one is dead whom I never saw and the other is still alive and she is the widow of late Niranjana Patnaik. The lady who is said to be the sister-in-law of opposite party is not known to me nor have I seen her....

The answer of the contemner to the above statement of Justice Mohanty incorporated in the above order is that the sister-in-law of Subash Chandra Mohapatra was the cousin sister of the mother-in-law of the learned Judge.

5. However, since the Court on the administrative side took the view that the statements made by the contemner were "reckless imputations against...a Judge of this Court offending the dignity of the Court in a pending case, it was a fit case where a proceeding should be drawn up", a notice to show cause was issued quoting the statements made by the contemner in the affidavit and the petition u/s 482, Cr. P.C.

6. Cause has been shown by the contemner where after stating all the above facts he has given a genealogy to support his statement that the wife of Sarat Chandra Mohapatra, uterine brother of Subash Chandra Mohapatra, and the mother-in-law of the learned Judge were cousin sisters.

After asserting his stand on the question of relationship, the contemner has stated that since he bona fide believed that the information regarding the relationship had been derived from reliable sources, he filed the petitions and affidavits and that he had no intention to dishonour the Court..." or make derogatory or contemptuous statements to affect the dignity of this Hon'ble Court.

7. It may be stated that the contemner is involved in a series of litigations. In this Court also he has got a large number of cases. He is an old man of about 63 years. He appears in person in all his cases and seems to be very casual in making insinuating statements and allegations against the Hon'ble Judge and officers of the Court.

8. The question that now arises is as to whether the statements made by the contemner in this particular case amount to a contempt of Court or the Hon'ble Judge and expose him to the peril of a conviction under the Contempt of Courts Act, 1971.

9. The proceeding has been initiated against the petitioner on the basis of his allegations regarding the relationship of the Hon'ble Judge with the adversary of the contemner. It may well be that the original/initial allegation of the petitioner

that the sister-in-law of Subash Chandra Mohapatra was the sister of the mother-in-law of the Hon''ble Judge may not be accurate because in the show, cause he has clarified the position that they were not sisters but cousin sisters. This fact has not been controverted.

10. "Contempt" has been defined in Section 2 of the Contempt of Courts Act, 1971 and Clause (c) defines "criminal contempt". Sub-clause (i) of Clause (c) of Section 2 reads as follows:

(i) (a) scandalises or tends to scandalise,

(b) or lowers or tends to lower the authority of any court;

11. The reflection on the court imputing unfairness or ignorance amounts to contempt which covers a wide range of acts, such as, committed in the course of adjudication of a cause or the execution of the court's order and such acts are calculated to hinder, delay and obstruct the administration of justice. Another class of acts brings the court into disrepute or disrespect or offend its dignity, affront its majesty or challenge its authority. Besides, there is another branch by publishing or using scandalous language charging the courts with improper motives in rendering their decisions.

12. One of the various forms of contempt is that which subsists in making statements, scandalizing, abusing, belittling or deriding the court or a judicial officer and causing embarrassment to the judicial officer in the discharge of his duties. It cannot be doubted that scandalizing Judges is the worst form of contempt of court. But as was observed by the Supreme Court in the case of *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, a distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court. It was further observed as follows (para 17):

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as contempt.

Alternatively, the test will be whether the wrong is done to the judge personally or it is done to the public. The publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the courts' administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

13. The question before us is as to whether the statements made by the present contemner in the affidavit and the petition would amount to scandalizing the court or undermining the authority of the court. In the affidavit the contemner had prayed for transferring his case (Criminal Revision No. 432 of 1979) from the

file of Justice Mohanty to any other Judge of the Court on the ground of his relationship with the petitioner of that case "in the greater interest of justice as the opposite party (contemner) apprehends that some injustice may be done to him". In the petition filed in Criminal Revision No, 558 of 1979. the contemner had again sought to make out the case of relationship. In my opinion, it did not contain any aspersion or contumacy although the allegations might amount to loss of confidence in the judicial integrity of the Hon"ble Judge.

14. At this stage I would do well to refer to a decision of the Supreme Court in the case of Gobind Ram Vs. State of Maharashtra, where the transfer petition filed before the District Magistrate contained allegations that the complainant an advocate, was in intimate relations with the Magistrate and that the latter was receiving costly presents from him. The High Court held the contemner-advocate guilty of contempt. The contemner took the matter to the Supreme Court where the rule was discharged and the following observations were made (para 9):

It is difficult to comprehend that the mere statement that a Magistrate was in intimate relation with a party who happens to be an advocate and enjoys his hospitality or has friendly relations will not constitute Contempt of Court unless there is an imputation of some improper motives as would amount to scandalizing the court itself and as would have a tendency to create distrust in the popular mind and impair the confidence of the people in courts. The allegation may or may not be defamation but it certainly cannot be contempt.

The Supreme Court referred to a case of this Court in Swarnamayi Panigrahi Vs. B. Nayak and Others, where the wife of the then Chief Justice of this Court had instituted a rent suit before the Additional District Collector where the other side filed a petition making statements like these (para 3) -

1. The lower Court openly identified himself with the plaintiff Shrimati Swarnamayi Panigrahi and is so partial to her that no justice or impartial decision can be expected from him:
2. He has gone out of the course prescribed by law and has taken over the function of witness and Court in himself in such a way that there is no parallel to it in the history of litigations in India : and
3. That opposite party wields extraordinary influence in the State as she is the wife of Shri Lingaraj Panigrahi. Chief Justice of Orissa High Court. It is being openly talked about that the conclusions are foregone.

The High Court held that there was no justification for making those allegations in the transfer petition although "some latitude is of course given in case of transfer petitions but the question was whether or not the contemner had exceeded the limits permissible under law and went out of his way not only to malign the personal integrity and judicial honesty of the lower court but also directly attacked the whole administration of justice headed by the Hon"ble Chief Justice of the State". The following observation is eloquent to quote (paras 21

and 22):

... The possible effect of his statement was to create in the mind of the public that the head of the judiciary in the State was exploiting his position through his wife and exercising undue influence on the subordinate Courts to serve his own personal ends. The Courts, however, are not too sensitive or touchy in this respect. The dignity of the Court is not so frail as to be easily affected by casual remarks or comments. But here it was a direct attack on the integrity and honesty of the Court and it brought to scandal and maligned even the Chief Justice of the State. In any event the last two sentences of the offending passage had a tendency or likelihood to undermine or impair the integrity and honesty of not only the lower Court but also of the High Court. Such tendency or likelihood was sufficient for holding contempt.

After noticing the *Murli Dhar and Another Vs. Emperor*, and observing that "it can well be said that cases in which applications for transfer are made stand on a slightly different footing from those where a party makes an allegation, either inside or outside the Court of a scandalizing nature imputing improper motives to the Judge trying the case", it was observed that the nature of the allegation will have to be closely examined and that so long as they do not satisfy the requirements of what may be regarded as contempt of Court no punishment can possibly be inflicted.

15. The Supreme Court in *Retti Deenabandhu and Others Vs. State of Andhra Pradesh*, cautioned that criminal contempt cannot be confused with contumacious conduct; Examining the charges levelled against the contemner and the materials on which he has been called upon to defend in this section while I hold the contemner guilty of contumacious conduct and express my strong disapproval of that conduct. I find myself unable to hold that the contemner is guilty of criminal contempt particularly when the contemner in his show cause stated that he bona fide believed the correctness of the information regarding the relationship and that while filing the affidavit and the petition he had no intention to dishonour the Court or to affect the dignity of this Court.

16. Be that as it may in the light of the observations of the Supreme Court in *Gobind Ram Vs. State of Maharashtra*, . I find myself unable to conclude that the contemner had exceeded the limits permissible under the law and that his sole object was only to malign the judicial honesty of Justice Mohanty. The petitioner, therefore, has failed to successfully make out a clear case for punishing the contemner under the provisions of the Contempt of Courts Act.

17. The application must, therefore, fail and subject to the observations made in the foregoing paras the rule of contempt issued by this Court is hereby discharged.

A.K. Padhi, J.

18. I agree.