
(1978) 03 RAJ CK 0019
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

M.R. Mitruka

RESPONDENT

Date of Decision : 02-03-1978

Acts Referred:

Contempt of Courts Act, 1971 — Section 13, 15, 17, 18, 2

Citation : (1978) CriLJ 1440 : (1978) RLW 224 : (1978) 11 WLN 96

Hon'ble Judges : R.L. Gupta, J; Dwarka Prasad, J

Bench : Division Bench

Judgement

Dwarka Prasad, J.—These proceedings arise out of a letter written by the respondent as President of the Rajasthan Judicial Service Association to Hon''ble the Union Home Minister, Central Government, New Delhi in respect of the alleged corruption in judiciary of Rajasthan. The letter appears to have been brought to the notice of Hon''ble the then Chief Justice of this Court, Shri V. P. Tyagi, who on Dec. 20, 1977 sought the opinion of the Advocate-General whether a notice for contempt of Court could be issued on the basis of the allegations made in the letter. The Advocate-General, Rajasthan, relying upon the decision of a Full Bench of the Orissa High Court in Registrar of the Orissa High Court Vs. Baradakanta Misra and Another, gave his opinion that the contents of the letter contain an attack on the judiciary and as such it was a fit case in which a notice of contempt could be issued.

Relying upon the opinion of the Advocate-General, the then Chief Justice while passing an administrative order regarding initiation of disciplinary proceedings against the respondent, on Dec. 24, 1977 (which was a holiday), also directed that a show cause notice be issued to the respondent why proceedings for contempt of Court may not be started against him for addressing such a letter to the Home Minister, The matter has come up before us in pursuance of the notice issued on the basis of the aforesaid order passed by the then Chief Justice. It may not be out of place to mention here that no order directing the issuance of a notice or taking cognisance of the case, passed by the Court or by Hon''ble the

then Chief Justice has been placed on the record of these proceedings but what we find is that only some extracts of the orders, passed by Hon"ble the then Chief Justice on Dec. 20, 1977 and Dec. 24, 1977 on the administrative side, in connection with the initiation of disciplinary proceedings against the respondent, have been copied out by some official and notices have been issued to the respondent on the basis of the aforesaid typed extracts.

2. The respondent has contested the validity of the notice issued to him and it has been submitted by him that no notice could have been issued unless cognizance was taken by this Court either on its own motion or on a motion made by the Advocate-General, or any other person, with the consent in writing of the Advocate-General. Learned Government Advocate tried to defend the procedure adopted in these proceedings and relied upon Rule 324 of the Rules of this Court. Under Sub-rule (1) of Rule 324, when an application for taking proceedings for contempt of court is presented before a Judge, other than the Chief Justice, he should direct that it be laid before the Chief Justice for orders. The rule does not provide as to who was authorised to direct the issuance of notice in a matter relating to contempt of Court. However, Sub-rule (3) of Rule 324 provides that where an order has been made directing that notice be issued to any person to show cause why he should not be punished for contempt of court a date shall be fixed for hearing and notice thereof in the prescribed form shall be given to the person concerned as also to the Government-Advocate.

The notice shall contain a substance of the allegations made against such person and require him to appear, unless otherwise ordered, in person before the Court at the time and on the date specified therein to show cause why he should not be punished for contempt of Court. The form of notice for contempt of court, as prescribed under the Rules of this Court, also goes to show that the matter is to be considered by the Court, and it is the Court which can direct issuance of a notice and fix a date for hearing of the matter. After the coming into force of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") the procedure to be followed in cases of Criminal contempt, as defined in Section 2 of the Act, has been prescribed in Section 15. According to the said provision, the Supreme Court or the High Court is empowered to take action in this regard either on its own motion or on a motion made by the Advocate-General or any other person with the consent of the Advocate-General or on a reference by a subordinate Court.

Then u/s 17 of the Act; a notice of every proceeding u/s 15 has to be served personally on the person charged, except otherwise directed by the Court and such notice has to be accompanied by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded, where the proceedings in the case have commenced on a motion. Section 18 of the Act provides that every case of criminal contempt u/s 15 shall be heard and determined by a Bench of not less than two Judges. Reading the provisions of Rule 324 of the Rules of this Court together with those of Sections 15 17 and 18 of the Act, the proper

procedure to be followed in the case of criminal contempt appears to be that the matter should be placed before the Chief Justice and if he considers it expedient that proceedings for criminal contempt should be initiated, then he should direct that the matter be placed before an appropriate Bench, which after applying its judicial mind to the facts, may take cognizance of the case.

3. We may also point out that a Bench of the High Court, which is entitled to take cognizance of a criminal contempt u/s 15 of the Act, may take action either on its own motion or on a motion made by any one of the persons specified in that section or on a reference made by a subordinate court, but such a bench must consist of at least two Judges of the High Court. To our mind, the words "heard and determined" employed in Section 18 of the Act are clearly indicative of the fact that the proceedings with regard to criminal contempt should be taken up, from the initial stage of taking cognizance up to the final determination, by a Bench consisting of not less than two Judges of the High Court, except in the case of the Court of a Judicial Commissioner.

We may also refer in this connection to the decision of their Lordships of the Allahabad High Court in *G.N. Verma Vs. Hargovind Dayal and Others*, Rule 19 of Chap. XVIII of the Rules of that Court appears to be analogous to the provisions of Rule 324 of this Court. In that case, the application for contempt of court was presented before a single Judge of the Allahabad High Court, who directed it to be laid before the Hon'ble Chief Justice of that Court and thereafter the Hon'ble Chief Justice ordered that the case be laid before a Division Bench of that Court.

In the Case of *State of Rajasthan v. Manohar Choghad* Criminal Misc. Contempt Appl. No. 1224 of 1974, decided by a Division Bench of this Court on 24-2-1978 reported in *State of Rajasthan Vs. Manohar Ghoghad and Others*, to which one of us was a party, a similar argument was advanced that the proceedings for a criminal contempt can only be initiated when the Division Bench, constituted to hear and determine such a case, issues notice to the contemner u/s 17 (1) of the Act, after applying its mind to the alleged contemptuous act. Although in that case, the Division Bench of this Court did not express its final opinion in this matter, as the case was decided on the question of limitation, yet the Bench observed that the aforesaid contention "does not appear to be devoid of force".

4. As we have already observed above, after examining the provisions of Rule 324 of the Rules of this Court and the provisions of the Act carefully, we have come to the conclusion that the exercise of jurisdiction to punish for criminal contempt commences with the initiation of proceedings for contempt by the High Court on a motion either suo motu or made by the Advocate-General or any other person with the consent of the Advocate-General or on a reference made to it by a subordinate court. Such initiation of proceedings for contempt, in our view, can only take place when a Bench, consisting of at least two Judges of the High Court, applies its judicial mind to the facts of the case and on a consideration thereof, decides to take cognizance of the case and directs the issuance of notice in accordance with the provisions of Section 17 of the Act.

It appears from the record of this case that the matter was never placed before a Division Bench of this Court for initiating proceedings for contempt nor a Bench of this Court applied its mind to the facts of the case, nor a Bench ever made up its mind to take cognizance in the matter. It is only thereafter that a notice u/s 17(1) of the Act could be issued by this Court. When a matter relating to criminal contempt is placed before a Division Bench for taking cognizance, the Court will apply its judicial mind to the facts of the case and would decide, in the exercise of its discretion, as to whether it would be proper to take action and to initiate proceedings for contempt in the matter or it may decline to take cognizance and to initiate the proceedings for contempt. In the present case, as the matter was not placed before a Division Bench for consideration nor a Bench applied its mind and decided to initiate proceedings and no cognizance was ever taken and thus no further action could be justified. We, consequently, hold that the notice issued to the respondent was improper and invalid.

5. The respondent tried to submit that the motion u/s 15 of the Act could have been made only by a Full Court, as according to him, "the High Court" in Section 15 should be interpreted as the Full Court. We are, however, unable to agree with this submission of the respondent, because Section 18 of the Act governs the hearing as well as the decision of the matter of criminal contempt u/s 15 of the Act and a proceeding for criminal contempt can be initiated, heard and determined by a Bench consisting of not less than two Judges of the High Court. We are fortified in our conclusion by the observations of their Lordships of the Allahabad High Court in *G.N. Verma Vs. Hargovind Dayal and Others*, where a similar submission was negatived and it was held that the Bench consisting of two Judges, before which the matter was laid under the orders of the Chief Justice, was competent to direct issue of notice.

6. It was then argued by the learned Government Advocate that as the matter has now been laid before this Court, we should consider whether the contents of the letter written by the respondent to the Union Home Minister amounts to criminal contempt. As we have heard the case on merits, we would like to express our views in that respect as well. We have carefully read the letter, which is the subject-matter of controversy in these proceedings and the respondent has also furnished his explanation before us today and has stated that he has the highest respect for the Judges of this Court and Judicial Officers of all courts and that he had no intention of scandalising them, either directly or indirectly. He has further stated that the reference to corruption in the letter in question was in relation to officials working in the judiciary and not to any of the Judges of this Court or the judicial officers. According to the respondent, his sole object in writing the letter was to invite the attention of the Union Home Minister to the increase in corruption and to help him to root out corruption in Rajasthan.

7. Learned Government Advocate argued that the letter in dispute is likely to bring the judiciary in disrepute and he placed reliance on the decision of their Lordships of the Supreme Court in *Shri Baradakanta Mishra Vs. The Registrar of*

Orissa High Court and Another, in support of his contention. The decision in Baradakanta's case, relied upon by the learned Government Advocate, is in fact the order passed by their Lordships of the Supreme Court on appeal from the decision of the Full Bench of the Orissa High Court in Registrar of the Orissa High Court Vs. Baradakanta Misra and Another, , on which reliance was placed by the learned Advocate-General in the opinion which he furnished on Dec. 23, 1977 in response to the order of Hon"ble the then Chief Justice dated Dec. 20, 1977. However, we are of the view that Baradakanta's case has no application to the facts of the present case.

In that case, the contemner, who though himself a judicial officer, attributed mala fides, serious bias, prejudice and improper motives to the Judges of the Orissa High Court and made a false insinuation that the High Court's approach was vitiated as it had prejudged the matter in the disciplinary proceedings before it. He went to the length of alleging that the High Court resorted to subterfuge method to counter-act the decision of the State Government in his matter and he insinuated the High Court as "an engine of oppression." Moreover, the contemner exhibited a contemptuous defiance of the order of the High Court and alleged that the dispensation of justice by the High Court on the administrative side was most atrocious and vindictive and declared that he would not obey the same.

Thus, in Baradakanta's case, the contemner had deliberately made the statement grossly scandalising the Court and intending to lower the reputation of the High Court. In the aforesaid circumstances, their Lordships of the Orissa High Court as well as their Lordships of the Supreme Court had come to the conclusion that gross contempt of court was committed by the person concerned. But we find nothing of this kind in the present case.

8. What we are required to look into and find out is as to whether it was the motive or the intention of the author of the letter in the present case to scandalise the court, by lowering the authority or prestige of this Court or the judiciary in the estimation of the people or to interfere with or obstruct the administration of justice. Having bestowed our careful attention to the contents of the letter in question, the same appears to us to have been written with the zeal and fervour of an idealist, acting with the spirit of a crusader against the evil of corruption and the sole object appears to be of concentrating the attention to the question of eradication of corruption in all its forms, rather than of making insinuations against any person or institution.

The author of the letter has drawn the attention of the authorities concerned to the deficiency or drawbacks in the working of the Anti-Corruption Department, and in his capacity as the President of the Association of Judicial Officers of the State he has offered his co-operation in eliminating corruption of all kinds. If the intention of the respondent, in writing the letter in question to the Union Home Minister, was to extend his helping hand in uprooting corruption in judiciary, which includes judicial offices and to offer his co-operation, as President of his Association, to the Anti-Corruption Department, which is placed under the charge

of Union Home Minister, with a view to suggest ways and means for eradication of corruption, then there can be no doubt that the statements made in that letter can be taken to have been made in good-faith. Though at certain places the letter contains some exaggerations, but to our mind that reflects the over zealousness of the respondent in his avowed object of maintaining the purity of the judicial system in the State. The respondent himself is a senior officer In the Higher Judicial Service of the State and as the President of the Association of the Rajasthan Judicial Officers if he thought that it was his duty to offer his co-operation to the authorities in the matter of eradication of corruption, then it would be difficult to say that in doing so he was actuated by any improper motive.

In these circumstances, we have no hesitation in accepting the explanation offered by the respondent that his sole object in writing the letter in question was to invite the attention of the concerned authorities to increasing corruption, in his capacity as a President of the Association of Judicial Officers of the State. The respondent appears to be very much concerned not only with the up-right conduct of his brother officers in the Judiciary but also with the maintenance of clean administration of justice in the State. The letter is of general nature and after a careful reading of the whole of the letter in the light of the explanation furnished by the respondent, we are unable to attribute any improper motive or malicious intention to him of tending to scandalise this Court or the judiciary in general or attempting a villification of the administration of justice in the State.

9. In *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, their Lordships of the Supreme Court quoted with approval the following observations made by Jagannadhadas, Chief Justice (as he then was) of the Orissa High Court in *The State Vs. The Editors and Publishers of Eastern Times and Prajatantra*,

A review of the cases in which a contempt committed by way of scandalization of the Court has been taken notice of for punishment shows clearly that the exercise of the punitive jurisdiction is confined to cases of very grave and scurrilous attack on the Court or on the Judges in their judicial capacity the ignoring of which could only result in encouraging a repetition of the same with the sense of impunity which would thereby result in lowering the prestige and authority of the Court.

Section 13 of the Act in substance enacts what their Lordships have observed and it has been provided therein that no court shall impose a sentence under this Act for contempt of Court, unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice. We have examined the matter with great earnestness and although we find that the respondent in his over zealousness has made some exaggerations, yet we are unable to find that while writing the letter in question he was actuated by any improper motive or malicious intention to scandalise the court or to do any act which may lower the authority or prestige of this Court, or of judiciary in general. We are, therefore, of the view that it is not a fit case in

which action need be taken against the alleged contemner.

10. In view of all that we have said above, we direct that the proceedings under the Contempt of Courts Act, 1971 against the respondent, on the basis of the letter written by him to the Union Home Minister be dropped and the notice issued to the respondent in this matter is hereby discharged.