
(2003) 07 BOM CK 0091

In the Bombay High Court

Case No : Suo Moto Contempt Petition No. 6 of 1998 and Criminal Application
No. 3799 of 1998

The Court on it's Own Motion

APPELLANT

Vs

Sou. Jayashree Khadilkar Pandey, Nilkanth Yeshwant
Khadilkar and The State of Maharashtra

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Citation : (2003) 2 ALD(Cri) 129 : (2003) BomCR(Cri) 1405

Hon'ble Judges : V.G. Palshikar, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : N.P. Bapat and Hemangi Prabhu for the Contemnor Nilkanth khadilkar and N.P. Bapat and G.V. Limaye for Contemnor Jayashree Khadilkar Pandey, Shekhar Naphade, Amicus Curie, for the Appellant; I.S. Thakur, APP, for the Respondent

Judgement

Palshikar, J.

The facts giving arise to this suo motu proceedings under Contempt of Courts Act, 1971 are as follows:

2. That the Government of Maharashtra had appointed one man commission under the Commission of Enquiries Act, 1952 and nominated Hon'ble Shri Justice B.N. Srikrishna, a Judge of the Bombay High Court (as he then was) to be the Commission. It was a one member Commission. The Commission was appointed to enquiry into the causes of bomb blasts which rocked the entire metropolis of Bombay in 1993. The articles of reference included enquiry into existence or otherwise of establishments, organizations etc, responsible for such outburst.

3. The Commission worked for five years and submitted its report to the Government of Maharashtra. In the report certain observations were made in relation to some newspapers and some parties. The Government of Maharashtra later on rejected the report. However, Shri Nilkanth Khadilkar who was then

Editor of Navakal wrote a series of articles in that paper allegedly for criticizing the report of the "Srikrishna Commission". When those articles came to the notice of this Court it was prima facie observed that the articles are contemptuous, they tend to lower the esteem of the judiciary in the eyes of public and the articles scandalize Justice Srikrishna. The articles have depicted justice Srikrishna as person unfit to be a Judge doing administration of justice. The articles prima facie had the tendency to lower the esteem of the Court in the eyes of the public. Therefore suo motu notices were ordered to be issued. Initially notice was issued to Smt. Jayshree Khadilkar-Pandey only as her name only appeared as Editor of the "Navakal" during the time those articles/editorials were published.

4. An affidavit was filed by her in response to the notice and it was pointed out that though she is editor and therefore responsible for the publication of articles therein the author of articles was Shri Nilkanth Khadilkar and not herself. However, she accepted the responsibility as an editor.

5. Shri Nilkanth Khadilkar suo motu filed affidavit in this Court on 13.11.1998. By this affidavit he unequivocally submits that the articles which are complained of as contemptuous editorials were authored by him and Jayshree Khadilkar-Pandey has nothing to do with it. He stated that he takes the full responsibility of the statements made in these editorials. He then says "I say that though I have not been served with the Show Cause Notice, I myself come forward to show cause and waive the service of notice." Thus, Shri Nilkanth Khadilkar took notice to show cause why action under Contempt of Courts Act, 1971 be not taken against him. By that very affidavit he proceeded to inform this Court that a Commission of Enquiry established under the Commission of Enquiries Act, 1952 is not a Court and therefore there is no question of contempt of court being committed by him in as much as all the editorials were directed as criticism of the report made by the Commission which was incidentally headed by Justice Srikrishna. It was an analysis of the report of a Commission and not criticism of any action done by a Judge as a Judge. The affidavit further goes to say that even if it is assumed that some statements made in the editorials are capable of lowering dignity of Srikrishna Commission it cannot amount to contempt of court because Srikrishna Commission is not a Court. Then Shri Khadilkar in para 6 of his affidavit submits as under:

"6. I submit that the Contempt of Courts Act has been enacted to ensure that the stream of justice is not polluted. The object behind the said Act is not to protect the dignity of individuals Judges but to protect the administration of justice and avoid interference in and obstruction to the administration of justice. It has been held by eminent Jurists that the weapon of Suo Moto action should never be used to protect the dignity of an individual Judge, for which the proper remedy would be an action for defamation. I submit that none of the aforesaid Editorials picture the Hon'ble Mr. Justice Srikrishna as a bad Judge, doubt his integrity or legal knowledge required of a Judge, and consequently have no tendency whatsoever

to lower the dignity of His Lordship as a Judge. In any event, none of the five Editorials is capable of lowering in the eyes of general public, the authority of a Court of Law. I vehemently deny that any statements in the said Editorials tend to lower the authority of the Court, which allegation has been the basis for initiating the present Suo Moto action by this Hon'ble Court. I submit that the action initiated is without any foundation and liable to be dropped at once."

Then in para 7 Shri Khadilkar proceeds to say that "I have utmost regard and respect for the Judges and the Judiciary." The affidavit then proceeds to justify the criticism that was leveled against the Commission. It reiterates the contention that the editorials were aimed at criticizing report of Srikrishna Commission and merely because it was headed by a Judge of the High Court it cannot be said that it is contempt of court. He then reiterated that none of the editorials if read as a whole show any disrespect to any court or a Judge and there is therefore no question of any action being taken against him under the act.

6. We will now notice what is contemptuous in the editorials published by Shri Khadilkar as contended by Shri Naphade. The first editorial appeared in the newspaper Navakal on 8.8.1998. IT was appearing on the front page and both the headlines used proclaim that it pertains to a Judge who has become insane
^^oM ykxsys U;k;ewrhZ ^^ ** vgoky gh tgjkph dqih A

It then proceeds to state that the author read the Srikrishna report throughout the night and was genuinely enraged by the same and therefore he is writing this editorial with due deliberations with research and knowledge. The editorial then proceeds to say that Justice B.N. Srikrishna is a Judge who is affected by insanity. Then it proceeds to describe the kind of insanity which has affected Justice Srikrishna and then says that the report of Srikrishna Commission is not in keeping with the seniority and tradition of a senior Judge. According to him it is defamation of the Judge himself. Then it is contended that the report of Srikrishna Commission from the first para to the last para itself is contempt of court. He then in all solemnity writes that he is aware that the opening four sentences of this article may amount to serious contempt of court and yet he is undertaking to write this editorials for criticizing Srikrishna Commission report. The words used by him are liable to be noted in vernacular :"

vkEgjyk iw.k tk.kho vkgs dh. ^^mPp U;k;ky;kpsd U;k;ewrhZ** ;k lUekukus vkf.k fo"oklkus jkT;kjT;kr loksZPp vlysY;k inkpk vR;ar xaHkhj voeku vkeP;k ;k ifgY;kp pkj okD;kauh gks? "kdrks A

Shri Khadilkar therefore claims that it was a thoughtful writing that it was consciously done and that he is aware that some observations in the editorials may amount to contempt of court and yet chose to write it. Because according to learned counsel Shri Bapat it was adventurism on his part of writing this article and the caption ^^osM ykxsys U;k;ewrhZ** was given to attract readership.

7. Throughout the article he makes reference to report of Srikrishna Commission

and reference to Srikrishna as Justice Srikrishna. At many places it is obvious that he is referring to the report of Srikrishna Commission. At one place he says it is true that for 20 days the entire State was ruled by devil as observed by Justice Srikrishna in his report. The reference obviously is to the report of Srikrishna Commission. Then he states why the Commission was appointed and what happened. He states that the Commission was appointed for a noble cause but the report delivered by Justice Srikrishna was distorted version. By referring to that he means to say that the Commission was appointed for creation of Ganesh idol but Justice Srikrishna delivered "apish contraption" in vernacular [^][^]gkrkr fnyh ekdMkph fo?fr A** These observations are obviously addressed to report of Srikrishna Commission. He then says that he would write 3 to 5 editorials and criticize the Srikrishna Commission report of 800 pages on the touchstone of jurisprudence and logic. But later on he observes that whether Justice Srikrishna was in his senses [^][^]U;k; Jh?".k ;kps Mkds fBdk.kkoj gksrs dk;** . Everywhere in this article a man who claims to be so knowledgeable who is going to write on touchstone of jurisprudence and who claims to have accomplished knowledge of Marathi language certainly had the knowledge that he could always use the words "Srikrishna Ayog" and on 12 occasions he has done so. He has chosen the name of Justice Srikrishna as Judge of the High Court because he wanted to criticize the work as done in his judicial capacity. Shri Khadilkar was aware of these facts and therefore he has used words Justice Srikrishna whenever it occurs with deliberate intention of referring to Justice Srikrishna alone and not as a Chairman of Srikrishna Commission. On several occasions, the learned counsel appearing for the contemnor submitted that it was nomenclature of the Commission, which Commission, it was therefore Justice Srikrishna Commission,. Nothing prevented Mr. Khadilkar who claims to have knowledge, intelligence and legal knowledge in Marathi language. He could have and has factually used wherever he meant it the words "Nayaymurti, Justice Srikrishna" and when he wanted to attack Justice Srikrishna he wanted to scandalize him he referred to him by name. Reference by name have always been contemptuous as will be seen from further editorials. In this first editorial he says that he openly accuses Justice Srikrishna that the entire "judgment was ready in his mind. [^][^]U;k; Jh?".k ;ka;/k eukr fudky vx iDdk f"kyk gksrk** In various other places he however says that the report of the Commission is trash. He therefore knows the distinction between the judgment (Nikal) and report (Ahwal). The report submitted by Justice Srikrishna, and therefore Mr. Bapat learned counsel for the contemnor submits, it is only nomenclature of the Commission is therefore not acceptable to us. He has used it as nomenclature and wherever he used it we do not think that he has committed any contempt but where he has virtually used the name of Justice Srikrishna knowingly fully well that he knows what he writes we are unable to accept the submission that it was only a nomenclature.

8. The second editorial was published on 938.1998. In first 7/3 paras he describes what the newspaper Navakal is, how great the Editors were, how great

he himself is and then he proceeds to say that the Commission has contemned Navakal without giving it an opportunity to defence itself against remarks. He therefore criticizes the report as improper action by the Commission. But then he says that Justice Srikrishna is egotic.....

^^U;k;ewrhZ Jh?".k Eg.kts mzPp iznkpK lk{kkR vgakdj vkgs A** Here the reference is directly to Justice Srikrishna. He higher post "

" referred to by the author obviously is that of Justice and Commission of Enquiry is not higher post. The author therefore meant to himself Justice Srikrishna. He then proceeds to say that as an Editor of such renowned newspaper he has tolerated many criticism and was never moved by it. Then he quotes in Marathi saying that ?vkeph iki.khlq/nk gyyh ukghA vksxsdwp dj.kk&;k gRrhyk dq=;kpS HkqWad.k ds dk; rFkkih eqacbZ mPp U;k;;k--? when an elephant walks he is not afraid of the barking dogs and then says but he would not tolerate even one more Judge of the Bombay High Court. He therefore specifically makes reference to a Judge of the High Court and not to a member of the Commission. The man who claims such a great knowledge knew the distinction and yet chose to say Bombay High Court Judge, he could have well said that he would not tolerate such more member or Chairman of Enquiry Commission. He then again criticizes Justice Srikrishna and says the ego and lack of knowledge in Justice Srikrishna is so great that it itself amounts to contempt of court. Then later on in the same editorial proceeds to compare Justice Srikrishna to Monkey. Refers to Justice Srikrishna gave tool in the hands of Navakal opponents which is like giving a burning torch in the hands of a monkey. There reference is to Justice Srikrishna. He could have well said Justice Srikrishna, Chairman Srikrishna Commission or Justice Srikrishna Commission then his claim that it was only nomenclature would have been genuine.

9. The third article is dated 10.8.1998 which begins by saying that any person who can read quietly the report of the Bombay High Court Judge B.N. Srikrishna must be called a saint. The reference is to Justice B.N. Srikrishna of Bombay High Court and not to the Chairman of Srikrishna Commission. The headline of this article is "immediately arrest Justice Srikrishna" for criminal inflaming riots. At both the occasions reference would have been to Justice Srikrishna Commission or Chairman of that Commission and call should have been to arrest Chairman of that Commission for making inflammatory riots. But Mr. Khadilkar has chosen to use the words Justice Srikrishna because he wanted to hurt Justice Srikrishna, because he meant to scandalize Justice Srikrishna and thereby lower the institution established for delivering justice. Each criticism of a Judge doing or discharging his duties as a Judge, a Judge nominated as a Chairman of Enquiry Committee by and under the Commission of Enquiries Act, 1952 is a person doing his duty. A Judge always is a Judge. He does not cease to be a Judge because he holds some enquiry commission and at any rate this being positive knowledge of Mr. Khadilkar he could have always maintained distinction. We will not say he has failed to do it because we are certain that he deliberately

did it. Then he proceeds to say that making such allegations in the report may result in riots and then says that it is surprising that a Judge of the High Court does not have this knowledge. He has obviously criticized a Judge of the High Court who wrote a report as Commission of Enquiry. It is clearly therefore criticism of Justice Srikrishna and criticism has crossed all levels of fairness and bonafides. He then says that Justice Srikrishna be arrested immediately and his report be seized. Then he does not say Justice Srikrishna Commission Chairman be arrested. Then there is a headline saying that he i.e. Mr. Khadilkar dismisses Justice Srikrishna and then proceeds to state that a Judge of the High Court can be removed only by Union of India and that too when Judge is affected by insanity. He is therefore quite aware of the procedure of removing a Judge of the High Court. Then he says that Justice Srikrishna is affected by insanity and hence the should be removed. This by no stretch of imagination can be called a fair criticism, it is an out and out scandalizing the Judge. It is nothing but contempt. The he brings out certain discrepancies or incorrect references or conclusions drawn in the Commission report. There also he refers to Justice Srikrishna. We would accept that it is criticism of the report. Consideration of this portion of the article would show that the author was aware of the distinction and has maintained it wherever he wanted to maintained it. He is that para clearly criticizes the report of the Commission.

10. The next article is published on 11.8.1998. The headline screams that Justice Srikrishna is more poisonous than a snake or cyanide knowing the distinction between Judge and Commission of Enquiry as well as he did he could have well said nomenclature Shrikrishna Commission is deadlier or poisonous then cyanide but he intended to scandalize the Judge and therefore he says Justice Srikrishna. Then he observes that Srikrishna Commission report is inflammatory and then he squarely refers to Justice Srikrishna report. Then he says that please see the deeds of Justice Srikrishna and then refers to page 15 of the report. There he says that:

?vkrk U;k;ewrhZ Jhd`".k ;kauh ts fnos ykdus vkgsr R;krhy 15 O;k ikukojhy gk fook ikgk----?

Here the reference may be intemperate but it is obviously addressed to the Commission of Enquiry's report. Then it is said that the report is anti public.

11. The last editorial is dated 12.8.1998 in which he refers to the report of Srikrishna Commission as a sinful report. The criticism obviously is of the report. But in the body of article he squarely accuses Justice Srikrishna of bias and malafide. He alleges that Justice Srikrishna wrote the report because he wanted beneficial postings or appointments after retirement. It is obviously slurring an individual and Justice Srikrishna and it has nothing to do with the report or commission headed by him. It is squarely an attack on the person, it is squarely a writing which scandalize the Judge and lowers the esteem of the judiciary in the eyes of people. Then he further says that the report of Justice Srikrishna is liable to be thrown out and ignored.

12. The reply to all these observations was given by Shri Bapat learned counsel appearing for him. The Contemnor Smt. Jayshree Khadilkar was present throughout the hearing. Shri Nilkanth Khadilkar could not attend because of his severely ill health. Shri Bapat, learned counsel argues the brief with enthusiasm and point out that all the observations were directed against the report of the Commission and he exerted us to read all the articles to find out that it was always a reference to the report of the Commission. Reference of Justice Srikrishna was only nomenclature of that Commission and therefore nothing in the editorials amounted to contempt of court.

13. We would like to make it clear hear that Shri Shekhar Naphade, learned counsel appearing as amicus curiae in this matter for the Court pointed out judgment in J.J. Hospital case and submitted that he does not propose to canvass before us that contempt of commission is contempt of court and therefore action should be taken. All passages or references to commission however derogatory they may be have not been considered by him nor reconsidered by us. The entire argument of the contemnor was that it is criticism of the report and Shri Naphade, learned counsel pointed out to us as detailed above that the references were intentionally to Justice Srikrishna as a Judge of the High Court and not nomenclature of Chairman of the Commission. We are therefore not dealing with question whether Commission of Enquiry is or is not a Court. We are proceeding on the submission of Shri Naphade that assuming it not be a Court what has been said by Shri Khadilkar in articles against Justice Srikrishna in his capacity as judge be considered as it is and we should determine whether it amounts to contempt of court or not. It was in the light of these submissions that the above observations were point out by Shri Naphade.

14. Reply of the contemnor as stated above is simple, that the entire criticism is directed against the report of Justice Srikrishna it is therefore not contempt of court. The editorials are liable to be read as a whole and so read it will be obvious that everything said is to the report of the Commission and therefore there is no question of any contempt of court. At the time when these above observations were pointed out by Shri Naphade it was contended by Shri Bapat that it is a nomenclature. When Shri Bapat was confronted with the first editorial captioned "mentally retarded Judge" he said that he headline was given to attract readership. He submitted that unless captive headlines are given nobody is going to read the editorial. He also submitted during the course of arguments that everybody does not read every line in the article and therefore if there is something stray line which may amount to contempt it should be ignored. We will consider this submission of Shri Bapat. He says that all the editorials are liable to be read together and reference should be understood in the context. The headlines are meant to catch the eye of the reader. The first headlines therefore begins with the catching headlines "Mentally retarded Judge" It nowhere mentions Commission. Therefore the headlines was chosen by Shri Khadilkar to attract public and the impression that a passer by should read headlines would be that it must be referring to some insane Judge. This

itself is sufficient to lower the esteem of judiciary. Further awareness of contempt may be committed by these articles is evident from first para of the first article. At several occasions reference to Justice Srikrishna is made as Judge of the High Court. Criticism is averred as Judge of the High Court and it is beyond limits of fairness and bonafides. The author has candidly taken the responsibility of committing contempt of court in the article itself. We have therefore no hesitation in holding that by reading those articles the author intended to lower the dignity of judiciary in the eyes of people. The whole tenor of these articles is that Judges are fools, they have no knowledge, they cannot do justice and all these observations meant only one thing and that is lowering esteem of the court. We have therefore no hesitation in coming to the conclusion that Shri Nilkanth Khadilkar has committed serious contempt of court of criminal nature by scandalizing Justice Srikrishna and by lowering the esteem of entire judiciary by creating a picture of it is something obnoxious from which people or readers of his editorials should shun. It is nothing but calculated criminal contempt of court. We therefore find Shri Nilkanth Khadilkar as guilty of contempt of court.

15. Smt. Jayshree Khadilkar-Pandey squarely owned the responsibility of the editor, as such editor she is responsible for publication of contemptuous material and therefore she also is guilty of contempt of court. Through out the arguments in the Court she was present and at no point of time any remorse is shown by her or by her Advocate who contended that what has been said about Justice Srikrishna about the judiciary is not contempt. That takes us to the question of sentence. We are told that Shri Khadilkar is very ill. Looking to his illness having regard to the fact that he also desired to criticize the report while committing contempt of court we feel that ends of justice would be met if he is sentenced to pay fine of Rs. 2000/-. We are aware that the prestige of judiciary is not so fragile as to be permanently tarnished by unwarranted criticism of such writers and yet we protect the institution of judiciary from such scandalizing attack. It is with this purpose that we have convicted Shri Khadilkar for contempt of court. In so far as Mrs. Jayshree Khadilkar-Pandey is concerned we see no reason to exclude her from punishment. In our opinion, she is equally guilty of publishing scandalizing material. She is guilty of contempt of court and we therefore punish her to suffer simple imprisonment for seven days and fine of Rs. 2000/-. The Contemnor Mrs. Jayashree Khadilkar-Pandey should immediately surrender to the police who, then would remit her to appropriate jail to undergo the sentence imposed by us.

V.G. Palshikar

D.B. Bhosale

After the judgment was pronounced, learned counsel for the contemnors prayed for suspension of the order for a period of four weeks. Taking into consideration the fact that the contempt of judiciary is committed, we see no reason to accept this prayer. It is accordingly rejected.

Time to surrender granted till Wednesday the 16th July, 2003.

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