
(1999) 04 BOM CK 0087

In the Bombay High Court

Case No : Criminal Suo Moto Contempt Petition No. 1 of 1999

The High Court on Its own motion

APPELLANT

Vs

Smt. Alin Uday Heble and another

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Contempt of Courts Act, 1971 — Section 14(1), 14(2), 19(1), 2

Citation : (1999) 4 BomCR 11 : (1999) 3 MhLj 99

Hon'ble Judges : Vishnu Sahai, J; Smt. Ranjana P. Desai, J

Bench : Division Bench

Advocate : C.J. Sawant, Mrs. V.K. Tahilramani, P.P. and D.N. Salvi, app, for the Appellant;

Judgement

Vishnu Sahai, J.—The question which we are called upon to adjudicate is, whether respondent No. 1- Smt. Alin Uday Heble (hereinafter referred to as "respondent No. 1" and Contemner") is guilty of the offence of criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971; and if so what sentence should be awarded to her?

2. The factual matrix from which this question arises is as under:

2(a) Sometimes in 1993, respondent No. 1 filed in this Court, Family Court Appeal No. 46 of 1993 arraying her husband Uday Laxman Heble as a respondent. The said appeal was dismissed by a Division Bench of this Court, comprising of A.V. Savant and P.S. Patankar, JJ., vide Judgment and Order dated 14th & 15th June 1995. Incensed by the said judgment, on 30th March, 1999 at about 11.45 a.m., when the Division Bench of A.V. Savant and Dr. (Smt.) Pratibha Upasani, JJ., was sitting in Court No. 54, respondent No. 1 clad in a black burkha (veil), hurled a shoe, of Tuffs make, towards the learned Judges which providentially did not hit them. On verification of their board the learned Judges found that she had no case before them. They felt that her contumacious conduct in hurling a shoe at them clearly amounted to a criminal contempt of this Court and consequently issued a suo moto notice under subsection (1) of

section 14 of the Contempt of Courts Act directing her to show cause as to why she should not be punished for the offence of criminal contempt. The said notice was made returnable on 1st April, 1999 at 2.45 p.m. They also directed that respondent No. 1 be arrested and kept in custody till further orders of the Court.

In the meantime, the learned Advocate-General Mr. C.J. Sawant and the learned Public Prosecutor Mrs. V.K. Tahilramani appeared in the Court. The former drew the attention of the learned Judges to the decision of the Apex Court reported in *In Re: Nand Lal Balwani*, .

The learned Judges marked that the shoe hurled at them as Exhibit-1 and directed that it be kept in the custody of Additional Registrar (Judicial). They also directed that in the event of respondent No. 1 furnishing a personal bond in the sum of Rs. 10,000/- with one or two sureties of the like amount, she be enlarged on bail subject to the condition that she would attend this Court on 1st April, 1999 at 2.45 p.m.

2(b) On 1st April, 1999 at 2.45 p.m., when respondent No. 1 appeared before the learned Judges, she verbally stated that she was sorry for the incident of hurling shoe on them at about 11.45 a.m. on 30th March, 1999, but when they directed her to file a written apology, she declined. On the converse, she prayed for a week's time to put on record her version on the judgment of this Court delivered on 14th/15th June, 1995 in Family Court Appeal No. 46 of 1993, referred to earlier. They candidly told her that in proceedings u/s 14 of the Contempt of Courts Act, they were not concerned with the merits of the Order dated 14/15th June, 1995. They granted time to her till 8th April, 1999. They also asked her whether she had any objection to their hearing the contempt matter. She replied in the negative but despite that on considerations of fair play, bearing in mind that justice should not only be done but should also appear to be done, they directed that the case, alongwith the statement of facts of the case, as mandated by sub-section (2) of section 14 of the Contempt of Courts Act, 1971, be placed before the Hon''ble Chief Justice for assigning it to another Bench.

By their order dated 1st April, 1999, the learned Judges adjourned the case to 12th April, 1999 to await further directions of the Hon''ble Chief Justice and directed that pending final disposal of the contempt petition, the bail order dated 30th March, 1999 shall remain operative.

2(c) In compliance of the order dated 1st April, 1999, the office put up the present petition before the Hon''ble Acting Chief Justice (A.C. Agarwal, J.), who was pleased to assign it to our Bench.

3. We have heard Mr. C.J. Sawant, the learned Advocate-General, Maharashtra with Mrs. V.K. Tahilramani for the petitioner. Respondent No. 1 in person and Mr. C.J. Sawant and Mrs. V.K. Tahilramani for respondent No. 2.

On 13-4-99, on which date also this case was on our Board and was adjourned to

today (14-4-1999) on the request of the learned Advocate-General, we had expressly asked respondent No. 1 whether she wanted to engage a lawyer and she had replied in the negative. On the said date another event took place. Ms. Doreen Nicholls, who had stood as a surety for respondent No. 1, gave an application that she had executed the surety on purely humanitarian grounds and she be discharged. We also directed that the said application be put up today. To complete the chronology of events of 13-4-99, it would be pertinent to point out that on the said date the petition was shown on the due admission Board but since the contempt notice, issued by this Court, had been served on respondent No. 1 and she had filed her affidavit dated 8-4-99, we directed that this petition should be shown on the Final Hearing Board on 15-4-1999.

4. The first question is, whether respondent No. 1 is guilty of the offence of criminal contempt as defined u/s 2(c) of the Contempt of Courts Act, 1971? Our answer to it is in the affirmative.

5. While giving the said answer we have been mindful of the fact that this Court is slow in exercising its contempt power for the object of such a power is not to instill a sense of fear in the minds of people, stifle criticism, which is fair and free from malice, but to uphold the majesty of law and it is only where the same is wilfully outraged by persons through commission of per se contumacious acts that this Court invokes its contempt jurisdiction; for it were not to do so, the majesty of law, through which the rule of law is enforced, would wither. And that indeed would be distressing.

6. Section 2(c) of the Contempt of Courts Act, 1971 read thus:

"2. In this Act, unless the context otherwise requires:-

(a).....

(b).....

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter of the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

A perusal of the above provision would demonstrate that if a person indulges in publication by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or does any other act whatsoever which falls within the ambit of (i) to (iii) he would be guilty of the offence of

criminal contempt.

In our view, the act of respondent No. 1 in hurling a shoe would be squarely covered by (ii) because it interfered with the due course of judicial proceedings which were going on in the Court at the time when the shoe was hurled on the Hon"ble Judges. As a result of it judicial proceedings which were going on in the Court came to a standstill.

We are fortified in our view by the decision of the Supreme Court reported in *In Re: Nand Lal Balwani*, , an Advocate enrolled with the Bombay Bar Association, hurled a shoe towards the Bench presided by the Hon"ble Chief Justice of India, while judicial proceedings were going on and the Supreme Court held him guilty of the offence of criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971.

7. Since respondent No. 1 was not represented by a lawyer we questioned her as to why we should not hold her guilty of the offence of criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971. She admitted that she had committed the said offence and expressed her unconditional regret and apology for the same. We also perused the affidavit which she had filed in this Court on 8th April, 1999 which reads thus:-

"I, Arlene Uday Heble, the alleged contemnor do solemnly affirm and state as follows:-

I received Show Cause Notice No. B.D. Crs/973/99 dated 30th March, 1999 and state as under:-

I admit the conduct indicated therein, I was under great tension on that day and did something which I should not have done. I am expressing unconditional regret and my sincere apology for what I have done.

I may add that I have the greatest respect for Courts of Justice in India and will not do or think of doing anything to scandalise or lower the reputation of the Court or to obstruct the administration of Justice.

I may add that although I was taken into custody in the afternoon of 30th March, 1999, I could secure bail only in the evening of 1st April, 1999 and was in the lock up for 3 days and 3 nights.

I will emphasise however that the police authorities treated me with consideration and courtesy and have no grievance against them.

Accordingly I respectfully pray that the notice issued be discharged and the bail bond directed to be stand cancelled. For this act of kindness, I will remain grateful to your Lordships."

A perusal of her affidavit would show that she admitted the incident and sought forgiveness from this Court.

8. For the said reasons, we are implicitly satisfied that respondent No. 1 Smt.

Alin Uday Heble is guilty of the offence of criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971.

9. The sole question which survives is the quantum of sentence which should be awarded to the Contemnor Smt. Alin Uday Heble. We questioned her on it. She told us that she has the greatest respect for Courts of Justice in India and would not do or think of doing anything to scandalise or lower the reputation of this Court or obstruct the administration of justice. She also told us that she was expressing her unconditional regrets and unconditional apology and we should accept the same. She finally told us that being a true Christian, she should have conformed to the teachings of Christ and not indulged in the contumacious act.

We have also perused the affidavit of the Contemner wherein she expressed her unconditional regret for the incident and affirmed her respect for Courts of Justice in India.

10. We also asked the learned Advocate general as to what would be appropriate sentence in this case. He told us that the contemnor had already been in jail for about 4 days; has small children; and bearing in mind the overall circumstances a sentence of one month's simple imprisonment would be sufficient to satisfy the majesty of law. But in all fairness we may add that he also invited our attention to the decision of the Supreme Court reported in *In Re: Nand Lal Balwani*, wherein a lawyer had hurled a shoe in the Court presided by the Hon'ble The Chief Justice of India, while the judicial proceedings were going on, and had been sentenced by the Apex Court to suffer 4 months simple imprisonment and to pay a fine of Rs. 2000/- and in default to undergo simple imprisonment for two months.

11. Section 12 of the Contempt of Courts Act provides that:

"(1) a contempt of Court may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation:- An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide."

A perusal of the said provision would show that a person guilty of contempt of Court may be punished in the following manner:-

- (a) with simple imprisonment for a term which may extend to six months: or
- (b) with fine which may extend to two thousand rupees: or
- (c) with both.

It would also show that it would be open to the Court to discharge the accused or remit the punishment awarded to him on apology being made to its satisfaction

and that an apology would not be merely rejected on the ground that it is qualified or conditional, provided it is bona fide.

12. We make no bones in observing that we are not prepared to accept the unconditional apology contained in the affidavit of the Contemnor and submitted by her orally in the Court.

12-A. Apology is an act of heart-felt remorse, emanating from the conviction that the contumacious act is so reprehensible that it needs to be atoned for. It is imperative, that not only should it be transparent with contriteness but tendered at the earliest. A belated apology is an after-thought and a subterfuge for escaping punishment.

Our view is fortified by the decision of the Supreme Court reported in *Mulkh Raj Vs. State of Punjab*, wherein, speaking for the Bench A.N. Ray, J., as he then was observed in paragraph 9 thus:

"Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemner finds that the Court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward -----."

13. In the instant case, we have no compunction in observing that not only was the apology belated but it was per se devoid of contriteness and penitence. We say this because a perusal of paragraph 4 of the statement of facts, submitted by the learned Judges u/s 14(2) of the Contempt of Courts Act, 1971, would show that when the matter was called out before them on 1st April, 1999, the Contemnor admitted that she had hurled a shoe at them at about 11.45 a.m. on 30th March, 1999 and also that she was sorry for the incident, but when the learned Judges asked her to file a written apology, she declined and instead prayed for time to put on record her version on the merits of the judgment of this Court dated 14/15th June 1995 in Family Court Appeal No. 46 of 1993 to which one of them (A.V. Savant, J.,) was a party.

It is significant to point out that the apology for the first time was expressed by the Contemnor in her affidavit dated 8th April, 1999.

The said facts would demonstrate that not only was it vitiated by the vice of delay but also by that of hypocrisy. Had it been a sincere expression of heart-felt remorse, and been bona fide as section 12 requires, it would have been tendered on 1st April, 1999 itself before A.V. Savant and Dr. (Mrs.) Pratibha Upasani, JJ.

Opportunity in law, as in life often comes once. It came to the Contemnor on 1st April, 1999. She spurned it and missed the bus. Now it is too late.

13-A. We wish to make it crystal-clear that an apology would not merit our acceptance if it is tendered at the convenience of the Contemnor and at a time when the ominous clouds of conviction are hovering on the head. Such an

apology is only a ploy for escaping punishment and a fraud on the statute.

14. For the said reasons we reject the contemnor's apology.

15. The question is whether a sentence of fine would be commensurate with the gravity of the contumacious act or a sentence of imprisonment or both would be necessary?

This Court is not oblivious to the fact that although the Contempt of Court Act, 1971 gives the Court a discretion to choose between a sentence of fine and one of imprisonment, the settled practice is that fine is the rule and imprisonment is an exception. It is only where the contumacious act is so reprehensible and outrageous that a sentence of fine would not be commensurate with its gravity, would the Court impose a sentence of imprisonment. To put it differently a sentence of imprisonment would only be imposed in the "rarest of rare cases".

In this connection it would be appropriate to refer to the authority reported in Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, . Paragraph 6 of the said authority reads thus :--

"A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule."

16. In the instant case, we are implicitly satisfied that a sentence of fine would not be commensurate with the gravity of the contumacious act committed by the Contemnor: a substantive sentence alone would meet the ends of justice: and there are special reasons which warrant its imposition.

In broad day light; at 11.45 a.m.; in Court No. 54; in the precincts of Bombay High Court; in the full gaze of litigant public; the contemnor had the temerity to hurl a shoe at two learned Judges of this Court.

The manner in which she committed the contumacious act shows that it was pre-planned. A perusal of the statement of facts tendered by the learned Judges would show that the Contemnor came clad in a burka (veil). This she obviously did in order to conceal the shoe which she was carrying. There could be no other reason. She is a Christian and a Christian does not put on a burka.

17. It should be borne in mind that by the act committed by the Contemnor, it is the majesty of law which has been mocked not that of the Judges, who were presiding in Court Room No. 54.

The majesty of the Judges rests on adherence to the oath which they take at the time of their appointment namely to administer justice "without fear or favour;

affection or ill will" coupled with their dignity, objectivity, restraint and excellence of judgments.

18. The question is; for outraging the majesty of law, what should be the quantum of substantive sentence, to be awarded to the Contemnor ? She has verbally stated that on account of the protracted litigation with her husband she has been through hell for almost a decade and her contumacious act is the outcome of the said litigation. She urged that she is a broken woman: discarded by her husband and disowned by her sons. She also urged that the mental condition wherein she committed the contumacious act warrants a token sentence. We have reflected over her verbal statement and also the affidavit filed by her.

In our view, that she has gone through a traumatic litigation for almost a decade with her husband and that she is psychologically shattered is no justification for the contumacious act committed by her and the manner in which she committed it. Being an educated lady, she should have remembered that there was a limit to which she could go. In the Indian social conditions, hurling a shoe at someone is perhaps the most sordid and depraved manner of disgracing that person and what pains us is that the victims of such a humiliation were two learned Judges of this Court, one being a lady (Dr. Smt. Pratibha Upasani, J.,) and the other being A.V. Savant, J., who had dismissed her Family Court Appeal. Dis-satisfied litigants have to be dealt with sternly if they choose to avenge an adverse judgment by committing acts like hurling a shoe at the Judge who delivered the judgment. Their remedy is to prefer a SLP in the Apex Court against the judgment by which they are aggrieved.

The view which we have taken is reinforced by the decision of the Supreme Court reported in *Asharam M. Jain Vs. A.T. Gupta and Others*, , wherein, in paragraph 3, the Supreme Court observed thus:

"There is never any risk of judicial hypersensitivity. The very nature of the judicial function makes Judges sympathetic and responsive. Their very training blesses them with "insensitivity" as opposed to hypersensitivity. Judges are always seeking good reasons to explain wrong conduct. They know there are always two sides to a coin. They neither give nor take offence because they deal with persons and situation impersonally, though with understanding. Judges more than others realise the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected: Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected."

19. We make no bones in observing that on the first blush we were inclined to sentence the Contemnor to four months simple imprisonment coupled with a fine

of Rs. 2,000/- in default thereof simple imprisonment for two months, as was done by the Apex Court in In Re: Nand Lal Balwani, But on a deeper reflection, we felt that the said sentence would be too harsh.

A perusal of paragraph 5 of the decision of the Supreme Court reported in In Re: Nand Lal Balwani, would show that the Supreme Court was prompted in awarding the said deterrent sentence because the Contemnor was a lawyer who, to borrow the words of the Supreme Court:

"As a lawyer, he should have known better. It is most unbefitting for an Advocate to act in the manner in which the Contemnor acted. No system of justice can tolerate such type of behaviour---"

In our case, the Contemnor is not a lawyer. She is a married lady having small children, who has gone through the trauma of litigation, lasting for almost a decade with her husband.

We feel that considering the over all circumstances and the mental state in which she was (as per her verbal statement) when she committed the contumacious act a sentence of two months simple imprisonment would meet the ends of justice. We impose this sentence with the hope and trust that it would have a chastening effect on her; make her realise the gravity of her contumacious act and deter others from committing such contumacious acts.

20. In the result, this petition is allowed. We find the Contemnor (respondent No. 1) Smt. Arlene Uday Heble guilty for the offence of criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971 and sentence her to undergo two months simple imprisonment for the same. She shall be taken into custody forthwith to serve out her sentence. Her bail-bonds stand cancelled and sureties discharged.

Since the Contemnor is not represented by a Counsel, we would be failing in our fairness, if we do not inform her that she has the right to prefer an appeal against our judgment to the Hon"ble Supreme Court of India by virtue of the provisions contained in section 19(1)(b) of the Contempt of Courts Act, 1971 and the limitation for preferring it is 60 days and it would run from the date on which she receives a certified copy, free of cost of our judgment. Since the Contemnor has been only sentenced to two months simple imprisonment, office is directed to send her the same through a special messenger through the Superintendent of the Prison wherein she is detained by 20-4-99. As soon as he receives it he shall handover the same to the Contemnor and in case she wants to prefer an appeal render her all help permissible under law.

21. Petition allowed.