

(2008) 09 PAT CK 0006

In the Patna High Court

Case No : Original Cr. Misc (DB) No. 8 of 2008

The State of Bihar

APPELLANT

Vs

Proceeding against Bharat Yadav and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 15(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 1 PLJR 74

Hon'ble Judges : Shiva Kirti Singh, J;Madhavendra Saran, J

Bench : Division Bench

Judgement

1. Heard arguments of both the sides. This matter has arisen on account of a reference u/s 15(2) of the Contempt of Courts Act, 1971 (hereafter referred as "the Act") made by 1st Additional Sessions Judge, Khagaria through his letter dated 22nd April, 2008. The reference contains all the relevant documents as enclosures, The most relevant of those documents is the order-sheet dated 13.2.2008 passed in Sessions Trial No. 46/ 1993 in which the contemnors (1) Bharat Yadav, (2) Bimai Yadav, (3) Ajay Yadav, (4) Pandav Yadav, and (5) Madan Yadav are accused and the contemnor No. (6) Ranbir Yadav is a witness.

2. In the letter of reference the learned 1st Additional Sessions Judge, Khagaria has stated that in course of proceeding of Sessions Case No. 46/93 in his court on 13.2.2008 (wrongly typed as 13.3.2008) the six contemnors named above, created ugly and unfortunate scene in the court-room by taking law in their hands. They disturbed the decency and decorum of the court intentionally and deliberately without caring for the administration of justice and ignoring repeated directions of the court to maintain peace and not to disturb the court's proceeding. As a result of their action the court's proceeding was obstructed for some time and due to resultant pandemonium in the courtroom and due to disregard by the contemnors of court's request to maintain peace, the Presiding Officer had to step down from the court and retire to his chambers for some time.

3. The reference also shows that the required show cause notices were issued to the contemnors to which they submitted their show cause which were not found satisfactory as per order dated 26.3.2008. Thereafter the learned subordinate court made the reference under consideration, enclosing therewith order-sheets dated 13.2.2008, 26.3.2008 and copies of show cause notices as well as show cause submitted by the contemnors. In this case by order dated 4th July, 2008 the contemnors were given notice to show cause why they should not be held guilty of criminal contempt for their acts set out in the reference made by the learned subordinate court. A joint show cause was filed on behalf of contemnors No. 1 to 4 and separate show cause were made on behalf of contemnors No. 5 and 6, namely, Madan Yadav and Ranbir Yadav.

4. On perusal of all the relevant documents, by order dated 14.8.2008 this Court recorded its satisfaction that prima facie case had been made against the contemnors for charging them for having committed contempt of court of 1st Additional Sessions Judge, Khagaria on 13.2.2008 by their acts mentioned in the letter of reference and in the order-sheet dated 13.2.2008. Through their counsel contemnors were given notice to appear in proceeding before this Court on 21st August, 2008 in Court and also to attend this Court on all dates thereafter until final orders could be passed on the charge against them.

5. All the six charged persons were given liberty to file an affidavit in support of their defence. In order to avoid unnecessary delay, they were also given liberty that they could file affidavit of not more than three persons who according to them may be useful as witnesses in this case only in respect of mishappening that took place in the concerned court on 13.2.2008.

6. On 21.8.2008 all the charged persons appeared personally in Court and an affidavit was filed on behalf of Madan Yadav whereas a supplementary show cause was filed on behalf of Ranbir Yadav,

7. On behalf of contemnors No. 1 to 5, who are the accused in Sessions Trial No. 46/93, it has been submitted that no doubt untoward scene was created in the court-room on 13.2.2008 which is unfortunate and they are sorry for the same but according to them such scene was created by contemnor Ranbir Yadav because he wanted the sessions case to linger by delaying his further cross-examination which was to take place on 13.2.2008 and only to achieve that purpose, as would appear from the order-sheet of that date, he succeeded in pressurizing the conducting APP Narayan Mandal to withdraw from the case and when the Public Prosecutor authorized another APP Hari Nandan Prasad to conduct the trial, he expressed his lack of confidence in the said APP and abused him as well as the learned lawyer for the defence Jitendra Kumar Singh on account of which the lawyer for the defence also expressed his desire to withdraw from the case. Thereafter when one of the accused expressed his stand that the accused were prepared to cross-examine the said witness without their lawyer, even then the said Ranbir Yadav refused to submit himself to cross-examination. According to an earlier order of this Hon"ble Court dated 8.9.2007,

recording of evidence of Ranbir Yadav had been permitted at the instance of the prosecution but only within one month but it was being delayed beyond all proportion by the said Ranbir Yadav. Only to cause further delay, he created pandemonium in the court by abusing the lawyers of both the sides as well as the accused persons without paying any heed to request of the Presiding Officer.

8. On behalf of the contemnor, Madan Yadav a further defence was taken that he is aged about 76 years, medically unwell having heart problem, diabetes as well as eye ailment and that he did not personally create any scene in the courtroom.

9. Many documents have been brought on record alongwith show cause of contemnors No. 1 to 4. Annexure-1 is a letter dated 18.2.2008 from the Public Prosecutor, Khagaria to the Hon"ble Inspecting Judge of this Court, Incharge of Khagaria district. A careful perusal of that letter shows that the Public Prosecutor has taken strong exception to conduct and behavior of Ranbir Yadav on 13.2.2008 and according to him when Ranbir Yadav began misbehaving with defence counsel Jitendra Kumar Singh then all pandemonium broke lose because it led to exchange of abuses and the situation even came to physical confrontation forcing the Presiding Officer to retire to his chambers. Inter alia, it has also been mentioned that generally Ranbir Yadav comes to court premises on the date fixed with hundreds of undesirable persons and by creating an atmosphere of fear and terror he attempts to force the prosecution and the court to act according to his wishes. This had let to several Additional Public Prosecutors withdrawing from the case in the past and same thing happened with APP Narayan Mandal, who returned the file to the Public Prosecutor with his notes. There upon the learned PP claims to have handed over the case to Hari Nandan Prasad, APP but he was also insulted by Ranbir Yadav who took the stand that no Government counsel at Khagaria should work in his case. He has further mentioned that on account of similar reasons and circumstances another Sessions Case No. 184/89 u/s 302 IPC relating to Ranbir Yadav had to be transferred from Khagaria to Munger district, Annexure-2 is letter of Hari Nandan Prasad, APP to the Public Prosecutor, Khagaria dated 14.2.2008 in which he has reiterated the same facts relating to happening in the court-room on 13.2.2008 as mentioned in the letter of the Public Prosecutor. Annexure-3 is letter of defence counsel Jitendra Kumar Singh to the Presiding Officer in Sessions Case No. 46/93 in which he has mentioned that he had conducted cross-examination of PW-13 (Ranbir Yadav, contemnor no, 6) in part but on 13.2.2008 the said witness used objectionable words against him as well as against Hari Nandan Prasad, APP and also threatened them in court which amounted to contempt. He expressed his inability to further cross-examine PW-13 as a defence counsel in that case.

10. The order of this Court dated 18.9.2007 in Cr. Misc. No. 30057 of 2007 has been annexed as Annexure-4/B. It shows that accused persons had challenged the order of the trial court allowing the prosecution to examine Ranbir Yadav as a witness on the ground that his statement was not recorded by the police u/s 161

CrPC. This Court dismissed the application of the accused persons but directed the prosecution to examine that witness within one month of receipt of that order failing which no further opportunity shall be given to the prosecution to examine the witness and the court shall proceed to dispose of the case in accordance with law.

11. With the first show cause of contemnor Madan Yadav the earlier order-sheet of Sessions Case No. 46/93 have been enclosed as Annexures-3 and 4 to show that order dated 18.9.2007 was received on 12.11.2007 and thereafter on 30.11.2007 contemnor Ranbir Yadav was examined as PW-13 and was also cross-examined in part. The order dated 11.12.2007 (Annexure-6) shows that Ranbir Yadav took the plea of illness and could not be cross-examined further on several dates. On. 15.1.2008, his appearance was filed by the APP but he did not appear in Court. He was further cross-examined on 1.2.2008 and the next date for his further cross-examination was fixed as 5.2.2008. He did not appear on that date in time and the matter was fixed for 6.2.2008. The order-sheet of that date (part of Annexure-7) shows that on that date after the matter was adjourned for 6.2.2008 and the accused persons returned from court, Ranbir Yadav made a prayer for his further cross-examination on that date itself or for longer adjournment because he wanted to go for treatment to Delhi. The trial court on such prayer fixed the case for 13.2.2008.

12. It has been submitted on behalf of the contemnors No. 1 to 5 that the earlier orders have been annexed only to show that Ranbir Yadav, an ex-MLA was bent upon not to allow his cross-examination to conclude and hence, deliberately he created the scene in the court. In their show cause these contemnors have given details of various criminal cases in which Ranbir Yadav has been facing trial for serious offences and also details of two cases u/s 302 IPC in which he is said to have been convicted. In the show cause of Madan Yadav, aged about 76 years, it has been stated as background of the present case that his son was killed on 6.12.1988 by Ranbir Yadav, a political heavyweight (who later became MLA) leading to Chautham Mansi PS Case No. 192/88 which was committed to the sessions and registered as Sessions Case No. 184/89. He could be produced for the purposes of framing of charge in that case only after an order by this Hon'ble Court in a criminal writ. His further pleading is that the present case, Sessions Case No. 46/ 93 has arisen out of Chautham PS Case No. 63/90 lodged by brother of Ranbir Yadav on totally false allegations only to pressurize Madan Yadav to compromise the case of 1988 relating to murder of his son.

13. On behalf of contemnor Ranbir Yadav an effort has been made to explain why he could not appear and why his cross-examination has remained pending by stating that on 12.12.2007 the court was informed that there is chance of compromise. In his show cause he has tried to justify his reaction in court by stating that he was surprised by sudden appearance of Hari Nandan Prasad, APP because he thought that he has appeared without orders of learned Public Prosecutor. He has enclosed his petition to that effect dated 13.2.2008.

According to him, because of his such stand hot talks started and he has blamed the other contemnors for the quarrel and nuisance created in the court-room. He has even explained his failure to appear for cross-examination on a later date i.e. 1.3.2008 by stating that he has asked for police protection and till such protection could be provided he could not attend the court.

14. On considering the various show cause filed on behalf of the contemnors and all the relevant materials on record, this Court finds that there is no denial that ugly scene was created in the court of learned 1st Additional Sessions Judge, Khagaria on 13.2.2008 in presence of the Presiding Officer, The concerned persons did not pay heed to repeated directions of the court to maintain peace and not to obstruct the proceeding of the case and thereby forced the Presiding Officer to retire to his chambers for some time, it is clear that such scene was on account of exchange of hot words and aggression shown by the five accused persons of the case on one side and contemnor Ranbir Yadav on the other. In such circumstances, all the six contemnors are found guilty of having committed criminal contempt of the concerned court by their joint action in course of proceeding of Sessions Case No. 46/93 on 13.2.2008. Accordingly, they are convicted for the charge of having committed criminal contempt of ? court of learned 1st Additional Sessions Judge, Khagaria.

15. The next question is that of awarding suitable punishment. On a careful consideration of entire facts and circumstances and considering the materials on record, particularly letters of three advocates out of whom only one is learned counsel for the defence and the others are Public Prosecutor and Additional Public Prosecutor of Khagaria, this Court has no doubt that it was contemnor, Ranbir Yadav, who acted in a motivated and high handed manner. He had no business to abuse the learned AFP or the learned defence counsel and his justification that he did so because he was not aware that the next APP Hari Nandan Prasad had been entrusted with the brief by the Public Prosecutor, deserves no serious consideration because such an issue could arise for consideration of only the court before whom Hari Nandan Prasad, AFP had appeared as the prosecutor. The contemnor, Ranbir Yadav, being only a witness had absolutely no concern with such an issue and on this pretext he can never be justified for creating pandemonium in court by abusing the learned lawyers appearing for the prosecution and the defence. It is found that it was on account of such abuse by Ranbir Yadav that exchange of hot words ensued. In that view of the matter, the tender of unqualified apology on behalf of the contemnors No. 1 to 5, namely, Bharat Yadav, Bimal Yadav, Ajay Yadav, Pandav Yadav and Madan Yadav is accepted and they are let off with admonition and severe warning to be careful in future. Although apology has been tendered by contemnor No. 6, Ranbir Yadav, also but in view of aforesaid discussion and finding this court is of the view that he is primarily responsible for the mishappening in the concerned court on 13.2.2008 and his conduct and acts betray absolute insensitivity to the dignity of court and of learned lawyers appearing in that case who are officers of the court. Considering the seriousness of his misconduct we are of the

considered view that his apology and plea for pardon should not be accepted. The ends justice require suitable effective punishment. Accordingly, contemnor No. 6, Ranbir Yadav is sentenced to simple imprisonment for a term of two months and also with a fine of Rs. 2000/-. In case of failure to pay fine, he will suffer further simple imprisonment for one month. This proceeding for criminal contempt on a reference u/s 15(2) of the Act is finally disposed of in the aforesaid terms.