
(1983) 09 BOM CK 0030
In the Bombay High Court

The State of Maharashtra

APPELLANT

Vs

Chandrakant Tripathi and Others

RESPONDENT

Date of Decision : 09-09-1983

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(c)

Citation : (1983) CriLJ 1841

Hon'ble Judges : S.J. Deshpande, J;B.C. Gadgil, J

Bench : Division Bench

Judgement

B.C. Gadgil, J.—This is a suo motu proceeding initiated by the Court against the three respondents under the Contempt of Courts Act. Respondent No. 1 Chandrakant. Tripathi is a Minister of State for Urban Development of Maharashtra. Respondent No. 2 Pundlik Meghe is a reporter of Marathi daily newspaper "Loksatta" while respondent No. 3 Vidyadhar Gokhale is the editor of the said newspaper. Respondent No. 1 had a tour in Wardha district on July 24/25, 1981. During that tour the inauguration of Zilla Parishad dispensary in a small village Bhidi was made. Respondent No. 1 presided over the function. Respondent No. 2 has sent a report of that function to the Loksatta newspaper and on August 5, 1981 that report was published. During the course of the arguments the report was read in Marathi and we give below its translation in English.

The tour of Wardha District during two days viz. 24th and 25th July by the Union Minister Vasant Rao Sathe and the Minister Chandrakant Tripathi who is in charge of Wardha District has become quite sensational.

On the occasion of the inauguration of the Z. P. dispensary at Bhidi the State Minister Chandrakant Tripathi who was in the chair severely criticised the present Judicial system. He said "under the present judicial system even criminals are given benefit of doubt and are acquitted if there are no witnesses or if they turn hostile. The innocent are sentenced. Courts grant stay orders frequently due to which it becomes impossible for the Government to carry out works of public

benefit in time. The Maharashtra Government will soon publish a book showing how many works are lying pending due to stay orders of the Court.

When Shri Tripathi said, "The guilty are acquitted by the Courts and the innocent are sentenced," the people present responded to the out-spoken speech of the State Minister by loud clapping of hands."

This report came to the notice of Justice Dharmadhikari and it was placed before the Division Bench for consideration. On August 25, 1981 the Division Bench issued rule.

2. In pursuance of that rule, respondent No. 1 appeared and filed his affidavit. In substance he contended that the speech which he delivered in "Hindi was mutilated in the article. According to him at the time of the inauguration of the dispensary he was referring to the present judicial system and that he pointed out that under the said system a person who has committed an offence gets benefit of doubt and is acquitted if there are no witnesses or if the witnesses turn hostile. He further alleged in the affidavit that he stated that in the speech that if tutored witnesses come forward and give consistent evidence and if per chance such evidence is accepted even an innocent man is sentenced. The affidavit then states that he referred to the delay in carrying out works of public interest and that without attributing any motive or imputation to the judicial authorities or without criticising the correctness of the orders passed by such judicial authorities he pointed out that in many cases Courts grant stay orders and the said works are not carried out on account of these orders. He has added in the affidavit that he pointed out in the speech that the Maharashtra Government is likely to prepare and publish a list of cases which are pending due to such orders passed by the Courts. In para 3 of the affidavit respondent No. 1 has stated that it was not his intention to blame the Courts or to represent to the public that the Courts are coming in the way of Government in implementing the works of public benefit. He has then added that he sincerely regrets if by saying anything mentioned above he has committed any mistake, though according to his bona fide belief he has not committed any mistake. He has also stated that he has no intention whatsoever to show any disrespect to any Court but he was only trying to point out the inadequacies of our system.

3. The reporter Pundlik Meghe in his affidavit has stated that he has reported the gist of the speech correctly and that the said gist was duly published in the newspaper with his comment on the reaction of the audience present at the said function. He has stated that he never intended to attribute any motive or imputation while reporting the gist of the speech and that he never intended to show any disrespect to any Court. In para 3 of the affidavit he has stated that he sincerely regrets if the publication of the Minister's speech has any way scandalised or lowered the authorities of the Court.

4. Respondent No. 3, the editor, has filed his affidavit in similar terms stating therein that he has published the report without any intention to attribute any

imputation to the judicial authorities.

5. Respondent No. 1 has also filed further affidavit after the matter was heard for some time and in that affidavit he has stated that a change in the system should be brought so that the judiciary has its independent machinery of investigation.

6. We have heard Shri M. R. Kotwal for respondent No. 1, Shri A. V. Datar for the reporter and Shri R. R. Salvi for the editor. Shri H. A. Solkar appeared for the State.

7. The term "criminal contempt" is defined in Section 2(c) of the Contempt of Courts Act as follows:

"criminal contempt" means the publication whether by words, spoken or written or by signs, or by visible representations, or otherwise of any matter or 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)...

(iii) ...

8. Shri Kotwal for respondent No. 1 contended that every citizen has a right to make bona fide comments upon the judgment of Courts and the judicial system, and that such comments would not constitute contempt of Court. He drew our attention to a number of authorities. For example in case of Regina v. Commr. of Police of the Metropolis, Ex parte Blackburn (No. 2), reported in (1968) 2 WLR 1204, the question about the criticism of certain recent judgment of the Court constituting contempt of Court was considered. Though there were certain inaccuracies in the criticism against that judgment the Court of appeal held that it is the right of every man to make fair comments even outspoken, on the matters of public interest. This can be seen from the judgment of Lord Denning. The relevant portion is on page 1206. Salmon L.J. has also observed on page 1207 that.

It follows that no criticism of a judgment however vigorous, can amount to contempt of Court providing it keeps within the limits of reasonable courtesy and good faith....

The Privy Council has considered a question as to whether a person commits contempt of Court if certain judgments delivered by the Court are commented upon. Shri Kotwal drew our attention to head-note "B" in case of Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago reported in AIR 1936 P.C. 141, which reads as follows:

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to

obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which is characterised as "scandalising a Court or a judge". That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat as contempt of court. In applying the law the Courts should not lose sight of local conditions. But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way the wrongheaded are permitted to err therein provided....

The Division Bench of this Court in case of *In Re A Letter Dated 2nd/15th Sept. 1980 of In Re: A Letter Dated 2nd/15th Sept. 1980 of Shrikant V. Bhat*, has held that bona fide criticism of the judgment is permissible exercise and that there won't be any contempt unless there is a clear evidence of imputation to the judicial authority of bad faith or ulterior consideration.

9. The question arose before the Supreme Court in case of *Gobind Ram Vs. State of Maharashtra*, as to whether the mere statement in an application for transfer that a Magistrate is friendly with a party who happens to be an advocate and enjoys his hospitality or has friendly relations with him will constitute contempt. The Supreme Court held that such a statement would not constitute contempt unless there is an imputation of some improper motives as would amount to scandalizing the court itself and unless there is a tendency to create distrust in the popular mind and impair the confidence of the people in the courts.

10. There cannot, therefore, be any doubt that a fair comment on the judgment of the Court would not constitute a contempt. We have already referred in para 1 of the judgment the English translation of the report of the speech delivered by respondent No. 1. That report gives an indication that respondent No. 1 severely criticised the present judicial system by suggesting that the Courts improperly acquit the accused if there are no witnesses or if the witnesses turn hostile. It is also his statement that innocent persons are convicted by the Courts and then respondent No. 1 has alleged "that works of public benefit are hampered as the Courts grant stay orders. In his first affidavit filed by respondent No. 1 he has alleged that he was referring to the present judicial system and then pointed out that a guilty person is acquitted if there are no witnesses or if the witnesses turn hostile. In the affidavit he has further stated that innocent person is sentenced if tutored witnesses come forward and are believed. In the second affidavit filed by respondent No. 1 he has made a further statement that in his speech he suggested that a change in the system should be brought so that the judiciary has its independent machinery of investigation, whereby the truth can be verified instead of depending upon the witnesses.

11. The clarification given by respondent No. 1 in both the affidavits will have to be scrutinised in the background of various circumstances. In the first place it is material to note that the occasion was an inauguration of a Zilla Parishad dispensary in Bhidi village which appears to be a very small village. The important question that crops up is as to whether at the time of the inauguration of the dispensary in a small village respondent No. 1 is likely or expected to open a topic which according to him was about the change in the judicial system. The respondent No. 1 does not state in his affidavit that the members of the public gathered for the function belonged to that strata of the society to which the topic can be addressed for the consideration of the audience and that too in the manner alleged by respondent No. 1. Secondly what is important is the tenor as to how respondent No. 1 referred to the acquittal of the guilty persons and the conviction of innocent persons, and how the audience reacted to the utterance. The reporter himself felt that the tour of respondent No. 1 had become quite sensational. Not only that but the report shows that the audience reacted to respondent No. 1 by clapping when respondent No. 1 said that guilty is acquitted and the innocent is sentenced.

12. It cannot be doubted even for a moment that it would be a gross instance of contempt of Court if any person charges that the judiciary is an institution where injustice is administered by convicting innocent person and by acquitting guilty person. Of course in a given case a particular judgment of the Court may be criticised as erroneous and if it is a fair criticism of the judgment there cannot be any question of contempt. But the question is whether a general statement that in the Courts an innocent person is convicted and a guilty person is acquitted would constitute an attack calculated to raise in the mind of the general public dissatisfaction about the judiciary. If there are no witnesses in a given case the acquittal will be the normal course. We are not sure as to what was the insinuation in the mind of respondent No. 1 when he made a statement that guilty person is acquitted if evidence is not available. Similarly it would be necessary to consider as to whether to suggest that the Courts acquit guilty persons is likely to scandalise the Courts or lower the authority of the court. As far as the stay orders are concerned, respondent No. 1 has stated in the affidavit that without criticising the correctness of the orders he has made a general statement that the works of public benefit are held up by such stay orders. Here again the question would be as to whether such a generalisation without commenting upon the correctness or otherwise of a particular order would be contempt of Court. We would also like to observe at this stage that a fair comment on a particular stay order in a given case is permissible. However such a comment is not available here. Chief Justice Beg in case of *In Re : S. Mulgaonkar* reported in AIR 1978 SC 727 has observed as follows at p. 734:

My opinion on matters touched by my learned brother Krishna Iyer J. is that, although, the question whether an attack is malicious or ill intentioned, may be often difficult to determine, yet, the language in which it is made the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and

properly analysing the materials before the maker of if are important considerations. Moreover, in judging whether it constitutes a contempt of court or not we are concerned more with the reasonable and probable effects of what is said or written than with the motives lying behind what is done.

Similar view was also expressed by the Supreme Court in case of E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar, . The relevant observations appeared on page 2024 (para 33) which reads as follows:

The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of Judges and Courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification....

However we do not propose to go into all these aspects in view of certain other principles laid down by the Supreme Court in the case mentioned above AIR 1978 SC 727 while dealing with the proceeding under the Contempt of Courts Act. In para 16, Chief Justice Beg has observed as follows:

I am not one of those who think that an action for contempt of Court, which is discretionary, should be frequently or lightly taken. But at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out....

Justice Krishna Iyer has enumerated certain principles which govern an action for contempt of Court. The following are the relevant observations in para 27:

The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences the dogs may bark the caravan will pass. The court will not be prompted to act as a result of an easy irritability.

The following are again the relevant Observations in para 32.

The fifth normative guideline for the judges to observe in this jurisdiction is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

13. In view of the abovementioned position we do not think that it would be worthwhile to consider in details the question as to whether the impugned speech of respondent No. 1 would constitute contempt of Court. This is more so when respondent No. 1 has stated in his affidavit that it was not his intention to

attribute any motive or imputation to the judicial authorities. It is not the intention but the effect of the utterance which is relevant. We have already mentioned that reporter has depicted the reaction of the audience that it enjoyed the ridicule by loud clapping. We may with advantage reproduce the following observations of Justice Balkrishna Menon in para 15 of the judgment of the Kerala High Court, reported in ATR 1983 Ker 105 T. A. Rajendran v. Vayalar Ravi-

Judges decide cases coming up before them. They have no forum to reply to the comments by men in public life expressed on public platforms. It is the duty of those who adhere to the principles of liberty, democracy and the rule of law to see that the institutions of democracy are not run down before the public, and it behaves well for all concerned not to be shortsighted in their perspective so that the democratic institutions do not forfeit public confidence.

However we think that as laid down by the Supreme Court we need not pursue the matter further and decide as to whether the impugned speech constitutes a contempt. We would like to take a decision of dropping the proceeding by adopting a charitable attitude as laid down by the Supreme Court with those observations the notices are vacated and the proceedings are dropped.