

CASE NO.:
Appeal (civil) 7948 of 2004

PETITIONER:
Haridas Das

RESPONDENT:
Smt. Usha Rani Banik & Ors

DATE OF JUDGMENT: 16/07/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 7948 OF 2004

CONTEMPT PROCEEDING

Haridas Das

\005.Appellant

Versus

Smt. Usha Rani Banik & Ors.

\005.Respondents

Apu Banik

\005Contemnor

Dr. ARIJIT PASAYAT, J.

1. "Judge bashing" and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalize and lower the authority of the Courts and can not be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest.

2. Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism.

3. During hearing of Civil Appeal No. 7948 of 2004 - it was noted that the contemnor had filed an application styled as "I.A for interim directions" purported with a prayer to initiate contempt proceedings against respondent No.4-Smt. Sharmista Das. Reference was made to a letter purported to have been written by respondent No.4 and sent to the President of India praying for removal of the then Chief Justice of India for his proved incapacity, misbehaviour and for appointment of Mr. Apu Banik (Contemnor). It was further stated as follows:

"That a dispassionate study without harbouring any pre-conceived motion of water-tight evidences, under possession, will prove beyond doubt how incapable, corrupt and

worthless is the present Chief Justice of the Supreme Court."

(emphasis supplied)

4. The apparent course for the tirade, as appears from the petition itself is an order dated 16.4.2004 in SLP No.6751 of 2004. The letter purported to have been written by one Sharmista Das to the President of India was annexed to the petition. Some portion of the letter forms part of the petition. Finding this statement in the IA to be contemptuous, notice was issued to the contemnor to show cause as to why proceedings for contempt shall not be initiated. Contemnor filed his reply to the notice. Certain statements in the reply were found to be more contemptuous, particularly para 4 thereof. Even though the contemnor wanted to withdraw the IA and tender regrets, it was not considered desirable to accept the prayer. Therefore, by order dated 2.5.2006 the matter was adjourned granting the contemnor opportunity to appear and file further reply/affidavit if he wanted to do so.

5. By order dated 26.2.2007, it was observed as follows:

"In the application reference was made to some parts of the letter purportedly written by respondent no.4. At this juncture it is relevant to note that the name of respondent no.4 was deleted at the request of the appellant. In the show cause reply the contemnor made allegations against numerous judicial officers (Judges), stating that they are as immoral, inefficient, incompetent and bribe-takers. The said statement was felt to be contemptuous by this Court and the contemnor was put to notice as to why action shall not be taken for making the statement. At this juncture it is also necessary to refer to some other parts of the "affidavit part-I (reply)" filed by the contemnor which are per se contemptuous. He has stated as follows at para 7:

(1) "The allegation in this case was irrelevant and uncalled for as the truth was far from the spirit of the highly biased observation."

(underlined for emphasis)

This was with respect to the order passed on 23.2.2006 by this Court while dealing with the appeal.

(2) It is stated at para 14 that the case was "Unprecedentedly taken away/diverted from the court of one Hon'ble Judge who dealt with the case more than anybody else. It is stated that "numerous legal practitioners in the Supreme Court raised their eyebrows" because of this. The contemnor has made a statement that only the Judge who granted leave is entitled to hear the civil appeal.

(3) It is also to be noted that allegations have been made against the Judges of the Guwahati High Court that they got eliminated witness, Smt. Ila Rani Das by stooping low.

(4) The contemnor in para 12 has also made a statement that the unfair means were adopted by the appellant and his counsel in misleading the Judges which would be clear if paras 8 and 9 of the judgment dated 14.11.2003 of the Guwahati High Court in Review Petition No. 76/2002 are perused.

As noted above, the statements are per se contemptuous. The contemnor who is present in Court is directed to show cause within a period of three weeks as to why action for contempt shall not be taken against him for making aforesaid statements.

The matter shall be listed on 26th March, 2007, when the contemnor shall appear in person. Ordered accordingly".

6. At this juncture, it would be necessary to quote para 4 of the reply filed by the contemnor. The same reads as follows:

"4. The deponent had personally met Hon'ble Chief Justice of India in his officer Chamber on 6.8.2001 and submitted to His Lordship a memorandum relating to judicial corruption and offered his cooperation to prove that numerous judicial officers (Judges) are immoral, inept, inefficient, incompetent and bribe-takers. "

(emphasis supplied)

7. When the matter was taken up for hearing on 15.2.2007, the contemnor stated that though he had signed the IA in question he did not know the contents as well as the contents of the accompanying letter. He further stated that he is in a position to justify the statement in para 4 of the show cause reply. It was further stated by him that he had made similar allegations against certain Judges of the Guwahati High Court and though initially contempt proceedings were initiated, they were dropped. This according to him was proof of the fact that the Guwahati High Court accepted that whatever allegations he had made touching the integrity of the Judges were correct.

8. He stated that contempt criminal No.9/2001 was initiated against him by the High Court as he alleged corruption against the then Chief Justice R.S. Mongia, Justices Iqbal Ahmad Ansari, A.K. Pattanaik, N.S. Singh, G.N. Sharma and a District Judge and Additional District Magistrate and others. It appears that the High Court perused the record and the earlier orders passed by the Court and taking "overall view of the entire matter", felt that there was no need to peruse further and need to be closed.

9. The contemnor who appeared in person submitted before us that if he has committed any mistake, he may be excused and that he was offering unconditional apology. At the same time he asserted that he would be in a position to substantiate the allegations in para 4 of the affidavit filed by him, and the allegations against the then Judges. He also filed an affidavit for "expeditious rectification of the judgment dated 21.3.2006". It is to be noted that after the judgment was delivered a review

application was filed which was dismissed. The affidavit appeared to be a further attempt in abusing the process of the Court.

10. Further, the contemnor has made a malicious allegation that the appeal should not have been heard by a Bench different from the one which granted leave. His affidavit in this regard reads as follows:

"It is also pertinent to mention here with both Hon'ble Chief Justice Y.K. Sabharwal and Hon'ble Mr. Justice K.G. Balakrishnan told the deponent that the case only be listed in the Court of the Justice who granted leave as a matter of unwritten rule when the deponent on different occasions tried to get the case mentioned in their respective courts. Both said that only Justice G.P. Mathur can consider it.

It is worth mentioning that Hon'ble Registrar General Mr. Jain himself told the deponent that Hon'ble Justice G.P. Mathur who granted leave is only entitled to hear the Civil Appeal.

But when the case was unprecedentedly taken away/diverted from the court of Justice G.P. Mathur who dealt with the case more than anybody else, numerous legal practitioners in the Supreme Court raised their eyebrows."

11. At the outset, we may say that though the contemnor claim to be an illiterate, various petitions filed by him show that he is really not so. Reference has been made by him to various decisions, quotations from authorities while he argued the cases in person for some of the parties in the Civil Appeal and before the High Court. May be that somebody else is behind him, but that does not in any way dilute the gravity of the acts done by him.

12. There is guarantee of the Constitution of India that there will be freedom of speech and writing, but reasonable restriction can be imposed. It will be of relevance to compare the various suggestions as prevalent in America and India. It is worthwhile to note that all utterances against a Judge or concerning a pending case do not in America amount to contempt of Court. In Article 19 the expression "reasonable restrictions" is used which is almost at par with the American phraseology "inherent tendency" or "reasonable tendency". The Supreme Court of America in *Bridges v California* (1911) 86 Law Ed. 192 said:

"What finally emerges from the clear and present danger cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely serious and the degree of imminence extremely high before utterances can be punished."

The vehemence of the language used is not alone the measure of the power to punish for contempt of Court. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The stream of administration of justice has to remain unpolluted so that

purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. To similar effect were the observations of Lord Morris in Attorney General v. Times Newspapers 1974 AC 273 at page 302. It was observed that when unjustifiable interference is suppressed it is not because those charged with the responsibilities of administration of justice are concerned for their own dignity, it is because the very structure of ordered life is at risk if the recognised Courts of the Land are so flouted and their authority wanes and is supplanted.

13. There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. No Court can claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves to be in possession of all truth to hold that wherever others differ from them are in error. No one is more conscious of his limitations and fallibility than a Judge. But because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. While fair and temperate criticism of the Court even if strong, may not be actionable, but attributing improper motives or tending to bring Judges or Courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must be and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of Court, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. To similar effect were the observations of Hidayatullah, C.J., (as the learned judge was then) in R.C. Cooper v. Union of India (AIR 1970 SC 1318).

14. There is an abundance of empirical decisions upon particular instances of conduct which has been held to constitute contempt of Court. We shall now refer to a few. Lord Russel of Killowen, L.C. J, has laid down in Reg v. Gray 1900(2) QB 36 at 40 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."

15. It cannot be denied that judgments are open to criticisms and in the said case it was observed :

"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 public good, no Court could or would treat that as contempt of Court". Indeed, Section 5 of the Act now provides that a person shall not be guilty of contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided. But, if such a defence is taken, it is always open to test whether the publication alleged to be offending was by way of fair comment on the merits of the case or was personal scurrilous abuse of a Judge as a

Judge, for abuse of a Judge or a Court or attacks on the personal character of a Judge are clearly punishable contempt. As stated in para 2 at page 21 of Volume-9 of Halsbury's Laws of England; Fourth Edition, "The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of the attack, but of protecting the public, and specially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired."

16. The view was echoed by this Court in *Re. D.C. Saxena v. CJI* (AIR 1996 SC 2481) In the same volume of Halsbury's Laws of England at para 27 it is stated thus: "Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower its authority or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court."

17. The above proposition has been approved and followed by Lord Atkin in *Andrew Paul Terence Ambrad v. The Attorney General of Trinidad and Tobago*, (AIR 1936 PC 141). It was observed as follows:

"No wrong is committed by any member of the public who exercised the ordinary right of criticism in good faith in private or public the public act done in the seat of justice. The path of criticism is public way, the wrong headed are permitted to err therein, provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impart the administration of Justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men":

Lord Justice Donovan in *Attorney General v. Butterworth*: 1963(1) QB 696 after making reference to *Req. V. Odham's Press Ltd ex parte A.G.*: 1957(1) QB 73 said: "whether or not there was an intention to interfere with the administration of justice is relevant to penalty not to quit". This makes it clear that an intention to interfere with the proper administration of justice is an essential ingredient of the offence of contempt of court and it is enough if the action complained of is inherently likely so to interfere. In *Morris v. Crown Office*: 1970(1) All E.R. 1079 page 1081, Lord Denning M.R. said: that the course of justice must not be deflected or interfered with. Those who do it strike at the very foundations of our society. In the same case, Lord Justice Solmon spoke:

"The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

Frank Further, J. in *Offutt v. U.S.*: 1954(348) U.S. 11

expressed his view as follows:

"It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage."

In *Jennison v. Baker* : 1972(1) All E.R. 997 at page 1006 it is stated:

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

18. Chinappa Reddy, J. speaking for the Bench in *Advocate General, State of Bihar v. Madhya Pradesh Khair Industries*: (1980 (3) SCC 311) citing those two decisions in the cases of *Offutt* and *Jennison* (supra) stated thus:

".....It may be necessary to punish as a contempt a cause of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of Court not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest but to protect and to vindicate the right of the public and the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

19. Krishna Iyer, J. in his separate judgment In *Re. S. Mulgaokar*: (1978 (3) SCC 339) while giving broad guidelines in taking punitive action in the matter of contempt of Court has stated:

".....If the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream"

20. In the case of *Brahma Prakash Sharma and others v. The State of Uttar Pradesh*: (AIR 1954 SC 10) this Court after referring to various decisions of the foreign countries as well as of the Privy Council stated thus:

"It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to

prove affirmative that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely or tends in any way to interfere with the proper administration of law."

21. It may be noted here that in the illustrated case *Re: S. Mulgaokar's case* (supra) it was held that the judiciary cannot be immune from criticism. But, when such criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect of the judiciary and destroy public confidence in it, it cannot be ignored.

22. Though certain imputations against the Judge may be only libelous against that particular individual, it may at times amount to contempt also depending upon the gravity of the allegations. In *Brahma Prakash Sharma's case* (supra) this Court held that a defamatory attack on a Judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished separately as contempt. The same view has been taken in *Perspective Publications (P) Ltd v. The State of Maharashtra* (AIR 1971 SC 221) and *C.K. Daphtary and others v O.P. Gupta and others* (AIR 1971 SC 1132). Therefore, apart from the fact that a particular statement is libelous, it can constitute criminal contempt if the imputation is such that the same is capable of lowering the authority of the Court. The gravity of the aforesaid statement is that the same would scandalize the court.

23. The right to criticize an opinion of a court, to take issue with it upon its conclusions as to a legal proposition, or question its conception of the facts, so long as such criticisms are made in good faith and are in ordinarily decent and respectful language and are not designed to willfully or maliciously misrepresent the position of the Court, or tend to bring it into disrespect, or lessen the respect due to the authority to which a Court is entitled, cannot be questioned. The right of free speech is one of the greatest guarantee to liberty in a free country like ours, even though that right is frequently and in many instances outrageously abused. If any considerable portion of a community is led to believe that either because of gross ignorance of the law or because of a wrong reason, it cannot rely upon the courts to administer justice that portion of the community, upon some occasion, is very likely to come to the conclusion that it is better not to take any chances on the courts failing to do their duty.

24. Judiciary is the bed rock and handmaid of democracy. If people lose faith in justice parted by a Court of law, the entire democratic set up would crumble down. In this background, observations of Lord Denning M.R. in *Metropolitan Properties Ltd. v. Lennon* (1968) 3 All E.R. 304 are relevant: "Justice must be rooted in confidence, and confidence is destroyed when right minded people go away thinking - the Judge is biased."

25. Considered in the light of the aforesaid position in law, a bare reading of the statements makes it clear that those amount to a scurrilous attack on the integrity, honesty and judicial competence and impartiality of judges. It is offensive

and intimidating. The contemnor by making such scandalising statements and invective remarks has interfered and seriously shaken the system of administration of justice by bringing it down to disrespect and disrepute. It impairs confidence of the people in the Court. Once door is opened to this kind of allegations, aspersions and imputations, it may provide a handle to the disgruntled litigants to malign the Judges, leading to character assassination. A good name is better than good riches. Immediately comes to one's mind Shakespeare's Othello, Act II, Scene 3, 167:-

"Good name in man and woman, dear my Lord
is the immediate jewel of their souls;
who steals my purse, steals trash;
its something, nothing; 'T was mine, its his,
and has been slate to thousands; But he that
filches from me my good name,

Robs me of that which not enriches him
And makes me poor indeed."

26. Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel the law Courts will absorb anything and every thing, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No Court can brook with equanimity something which may have tendency to interfere with the administration of justice. Some people find judiciary a soft target because it has neither the power of the purse nor the sword, which other wings of democracy possess. It needs no reiteration that on judiciary millions pin their hopes, for protecting their life, liberty, property and the like. Judges do not have an easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Pannick in his book "Judges". Judges are mere mortals, but they are asked to perform a function which is truly divine.

27. What is contempt of Court has been stated in lucid terms by Oswald in Classic "Book on Contempt of Court". It is said:

"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and demonstration of law into disrespect and disregard or to interfere with or prejudice parties, litigant or their witnesses during the litigation."

"Contempt in the legal acceptance of the term, primarily signifies disrespect to that which is entitled to legal regard, but as a wrong purely moral or affecting an object not possessing a legal status, it has in the eye of the law no existence. In its origin all legal contempt will be found to consist in an offence more or less direct against the sovereign himself as the fountainhead of law and justice or against his palace where justice was administered. This clearly appears from old cases."

28. Lord Diplock, speaking for the Judicial Committee in

Chokolingo v. Attorney General of Trinidad and Tobago (1981) 1 All E.R. 244, summarized the position thus: "Scandalising the Court is a convenient way of describing a publication which, although it does not relate to any specific case either part of pending or any specific Judge, is a scurrilous attack on the judiciary as a whole which is calculated to undermine the authority of the Courts and public confidence in the administration of justice. Thus, before coming to the conclusion as to whether or not the publication amounts to a contempt, what will have to be seen is, whether the criticism is fair, temperate and made in good faith or whether it is something directed to the personal character of a Judge or to the impartiality of a Judge or court. A finding, one way or the other, will determine whether or not the act complained of amounted to contempt."

29. Mahajan, J in Aswini Kumar Ghose v. Arabinda Bose, (AIR 1953 SC 75), observed as follows:-

"No objection could have been taken to the article had it merely preached to the Courts of law the sermon of divine detachment. But when it proceeded to attribute improper motives to the Judges, it not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of this Court..... It is obvious that if an impression is created in the minds of the public that the Judges in the highest Court of the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined..... We would like to observe that it is not the practice of this Court to issue such rules except in very grave and serious cases and it is never over-sensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity....."

30. There can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of Judges, the ultimate victim is the institution. The day the consumers of justice lose faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration.

31. When the background facts highlighted above are considered in the background of the principles set out above, the inevitable conclusion is that the contemnor deserves no sympathy. In fact, the lenient approach of the Guwahati High Court seems to have encouraged him to make statements on oath tarnishing the image of the Judges of the highest judiciary. His apology seems to be not genuine. This is more so because he wanted to justify the statements made in para 4.

32. Therefore, we find the contemnor guilty of contempt. He is sentenced to undergo imprisonment for a period of two months. He shall be taken into custody and sent to Tihar Jail, New Delhi, forthwith to serve the sentence awarded.

33. The contempt proceedings stand disposed of.

JUDIS