

CASE NO.:

Appeal (crl.) 473-474 of 2003

Appeal (crl.) 668-669 of 2003

Appeal (crl.) 678-679 of 2003

PETITIONER:

Arun Paswan, S.I.

RESPONDENT:

State of Bihar & Ors.

DATE OF JUDGMENT: 12/12/2003

BENCH:

S.N. VARIAVA & H.K. SEMA.

JUDGMENT:

J U D G M E N T

SEMA, J

These appeals are directed against the judgment and order dated 5.3.2003 passed by the Special Bench of High Court of Judicature at Patna. By the aforesaid order, the Special Bench convicted the appellants S.I. Arun Paswan, S.I. Sakaldeo Yadav and S.I. Syed Ahmad Khan to undergo sentence of two months' simple imprisonment in CWJC No. 1220/2002 with MJC No. 722/2002. The appellant - Sudarshan Prasad Mandal, Dy. Superintendent of Police was sentenced to pay a fine of Rs. 1,000/- and in default simple imprisonment for 15 days. Criminal Appeal Nos. 473-474 of 2003 have been preferred by S.I. Arun Paswan, Criminal Appeal Nos. 668-669 of 2003 have been preferred by S.I. Sakaldeo Yadav and S.I. Syed Ahmad Khan and Criminal Appeal Nos. 678-679 of 2003 have been preferred by Sudarshan Prasad Mandal, Dy. Superintendent of Police.

We have heard Mr. Sushil Kumar, learned Senior Advocate on behalf of the appellant in Crl. A. Nos. 473-474 of 2003; Mr. Jaspal Singh, learned Senior Advocate on behalf of appellants in Crl. A. Nos. 668-669 of 2003 and Mr. Ranjit Kumar, learned Senior Advocate in Crl. A. Nos. 678-679 of 2003. We have also heard Mr. B.B. Singh, learned counsel for the respondent-State in all the appeals.

We deem it not necessary to recite the genesis of the incident leading to the filing of the complaint by the learned District & Sessions Judge, Sasaram. Suffice it to say that the criminal contempt has been initiated against the appellants herein pursuant to the complaint of 19th January, 2002 lodged by the learned District and Sessions Judge, Sasaram addressed to the Registrar General of the High Court of Judicature at Patna. In the report it is stated inter-alia that in the pending investigation of P.S. Case No. 200/2001 under Sections 302 and 201/34 I.P.C. for which a bail application No. 1671/2001 was pending on account of non-production of case diary, the investigation officer - S.I. Arun Paswan (contemner) was directed to produce the case diary on 10.1.2002 on which date, on the request of the public prosecutor, the case was adjourned to 16.1.2002 on the ground that the I.O. had gone to Banka for giving evidence in a case and the case diary would be produced on the next date. But on 16.1.2002 also, the case diary was not produced. The learned District & Sessions Judge, thereafter, issued a show cause notice to the I.O. to appear personally before him as to why he should not be prosecuted under Section 349 Cr.P.C. On 19.1.2002, the contemner - I.O. appeared before him and filed show cause. He produced the case diary, which was found to be written only upto 28.11.2001. It was also found that the I.O. was present at the police station on 9.1.2002 till 7.00 A.M. but he did not send the case diary and, therefore, the shown cause was rejected. By order dated 19.1.2002, the learned District Judge directed the contemner to remain present in Court till the rising of the Court at 4.30 P.M. and to file further show cause. The complainant further stated that while he was hearing another criminal matter in the court after recess, a group of persons

in plain clothes as also in police uniform were seen on the road in front of his court room in the civil court premises and after some time they started raising abusive slogans against him. The learned District Judge stated that he was informed by his bodyguard, some of the senior members of bar associations and also by officers and employees of the civil court that the band of police officers was being led by Sudarshan Prasad Mandal, Dy. S.P. Sasaram; S.I. Sakaldeo Yadav, posted at Police Lines Dehri; and S.I. Syed Ahmad Khan of Police Line Dehri. It is further stated in the complaint that the complainant learnt from the judicial officers, members of the bar and some of the officers of the executive that a meeting was held in the chamber of the Dy. Superintendent of Police where the Superintendent of Police was also present for creating pandemonium and to assault the District Judge. The aforesaid complaint was followed by another complaint dated 22/23.1.2002. In the subsequent complaint, the complainant inter-alia categorically stated that he had received the information by the staff of the civil court and some of the advocates that the police officers of the District of Rohtas had assembled for a meeting for reviewing law and order situation on the eve of Panchayat Elections to be held on the next day i.e. 20.01.2002 and S.I. Arun Paswan, who was ordered to remain in the Court after rejection of his first show cause went out during the recess hours and asked them to come to the court premises and they were led by one Dy. S.P., Sasaram. They were raising slogans of "District Judge Murdabad, Bhagalpur Dohrana Hai" and other abusive slogans. It is also stated that they were present in the court premises with their official arms with them for creating trouble and causing disruption in the court function. They also abused the presiding Judge raising slogans against the judiciary as also challenging its authority with an intent to criminally assaulting the District Judge after hatching conspiracy. It is also stated in the complaint that Dy. S.P., Sasaram had held the meeting alongwith the participating officers of the police on 19.1.2002 in the chamber of the Dy.S.P. The civil court building, court room and chamber of the complainant were situated on the southern side of the G.T. Road and that of the S.D.M. and Dy. S.P. were situated opposite to the civil court building, on the northern side of the G.T. Road.

He has also stated in the complaint that D.I.G. Shahabad Range called him up at 9.00 P.M. on 20.1.2002 and told him that F.I.R. was to be lodged against him and actually the F.I.R. was received on 21.1.2002.

On receipt of the complaint, a special Bench was constituted and notices were issued to the contemnners as to why contempt proceedings should not be initiated against them. The High Court also directed the Director General of Police and the Additional Director General of Police to appear before the Court. They were asked to file affidavit. The Additional Director General of Police made spot enquiry and submitted the report on 27.1.2002 along with the affidavit. The High Court, after examining the fact finding report of the Additional Director General of Police and other material on record found the contemnners guilty and recorded the sentence as above.

The submissions of learned counsel for the appellants are all based on denial of finding of facts, recorded by the Additional Director General of Police and accepted by the High Court, and are almost common in all except one legal submission made by Mr. Jaspal Singh, learned Senior counsel appearing for appellants in Crl. A. Nos. 668-669 of 2003, which we shall be dealing at an appropriate time.

It is argued by Mr. Sushil Kumar, learned Senior counsel on behalf of the appellant - S.I. Arun Paswan (Crl. A. Nos. 473-474 of 2003) that he was the second I.O. of the case and had not received any information to produce the case diary. It is argued that pursuant to the show cause notice he had tendered apology which ought to have been accepted. It is further argued that the contemner was present inside the court room at the time when slogans in the abusive language were being shouted against the Judge and the judiciary outside the court and he had not played any role therein. At this stage, it is pertinent to dispose of this argument.

Before the Additional Director General of Police, S.I. Arun Paswan had appeared and gave evidence. He admitted that he had written the F.I.R. P.S. case No. 46/2002 lodged on 19.1.2002 under Sections 342/504 I.P.C.

and Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the District and Sessions Judge. It is unthinkable that S.I., who is a part and parcel of the administration of justice, could have filed an F.I.R. against the District and Sessions Judge for such offences. This itself disclosed the frame of the mind of the contemner towards the judicial officers and judicial administration.

He has also stated that during the lunch break he did not go out as the District Judge had ordered him to remain present in Court till 4.30 P.M. It is the specific case of the contemner that he remained present in the court room throughout the day from 11 A.M. to 4.30 P.M. and he had no idea as to who were the persons shouting slogans against the Judge. He had also stated that he made a request to the District & Sessions Judge to permit him to go out so that he could talk to the persons and pacify them. This would clearly show that he was aware of the fact as to who were the persons who were shouting slogans against the Judge and this was because of his detention which had provoked them to indulge in shouting slogans against the Judge. It is material on record that there was a lunch recess in court. It is difficult to believe that the contemner remained present in the court room throughout the day even during the lunch recess. The learned District and Sessions Judge, in his subsequent report, had categorically stated that during the lunch recess the contemner had gone outside and talked to the police officers, who had assembled there in connection with law and order meeting. He also stated that the contemner incited the officers assembled there to retaliate against the judicial officers and the District and Sessions Judge, in particular. It is, therefore, clear that the immediate reaction of the police officers in shouting slogans against the District and Sessions Judge and the judicial officers was because of the detention of the contemner, and without his meeting the officers so assembled they would not have known about his detention. There is a direct nexus between his detention and the shouting of slogans and vandalism against the District and Sessions Judge and the judicial officers. We have already noticed the manner in which the contemnors had conducted themselves as police officers. Such acts committed by the police officers were grossly contemptuous and beyond condonable limits. In our view, therefore, the High Court was right in rejecting the apology tendered by them.

Mr. Ranjit Kumar, learned Senior counsel appearing for appellant in Crl. A. No. 678-679/2003 strenuously urged that the contemner - Sudershan Prasad Mandal, Dy.S.P. was not aware at first that such slogan shouting had taken place at civil court premises and only after he came to know that he went to the spot and pacified the officers. This contention is belied by the facts of the case. It is admitted that on the said date the contemner was present in the SDM's office where a meeting was being held for review of law and order situation for the Panchayat elections, to be held on the next day. It is the contention of Mr. Ranjit Kumar, learned Senior counsel that at the particular time, the contemner was sitting in the SDM's office and he had no knowledge as to what was happening in the civil court. The fact of the case is that the office of the SDM is situated on the North of G.T. Road and the civil court is situated on the south of the G.T. Road, i.e. to say it was across the G.T. Road. In such a situation, it is difficult to believe that the Dy. S.P., when sitting with the SDM, would not know as to what was happening in the adjacent building. This apart, Mr. Srikant Kachhap, S.I., who was posted as Police Inspector-cum-In-charge of the Police Station, Sasaram and was present in the meeting held in the office of the SDM, had stated that he had received information at about 2.45 P.M. that S.I. Arun Paswan, in-charge of the Police Station, Bikramganj had been detained in the court by the District and Sessions Judge and this information was also received by the junior inspectors and the Police Inspector sitting with him in the meeting. He also stated that this information was also within the knowledge of Dy. S.P. Mandal, but he did not stop the junior inspectors from going towards the court nor he went to the court premises promptly. He further stated that had the Dy. S.P. Mandal stopped the officers from going to the court premises or reached the court premises immediately thereafter, the unfortunate incident would have been averted. He further stated that the other junior inspectors, who had come to take part in the meeting, also moved towards the court. He further stated that he prevented

all of them from doing so but they did not pay any heed to him and moved towards the court. He categorically stated that at that time, the contemner - Sh. Sudarshan Prasad Mandal, Dy. S.P., Sasaram was present in the office of the Sub Divisional Officer. It is hard to believe that all the junior police officers assembled at that place had received information at about 2.45 P.M. but the Dy. S.P., who is the senior police officer, would not know about the incident which would have enabled him to take precautionary measures at appropriate time. The argument that the contemner had not received the information about the incident is, therefore, inherently unbelievable and cannot be accepted.

Mr. Jaspal Singh, learned counsel appearing for the contemnors in Crl. A. Nos. 668-669 of 2003 strongly urged that there was breach of principles of natural justice inasmuch as the contemnors were not afforded an opportunity of cross-examining the witnesses, who had deposed against them. He further submitted that the name of the contemnors is not mentioned in the complaint of the District and Sessions Judge. It is further argued that the contemnors - S.I. Sakaldeo Yadav and S.I. Syed Ahmad Khan were not at all present on the spot as they were at Dehri Police Lines at that particular time.

It is further argued that the contempt proceedings initiated against the contemnors by the High Court are incompetent and are hit by proviso to Section 10 of the Contempt of Courts Act, 1971 as according to him, Section 345, Crl. Procedure Code, 1973 empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under Section 175, 178, 179, 180 or Section 228 of the Penal Code in the view or presence of the court.

We are unable to accept the submissions made by the learned counsel for the appellants. With regard to non-disclosing of the names of the contemnors in the complaint it is factually incorrect. In the subsequent complaint of 22/23.1.2002, the name of the contemnors S.I. Sakaldeo Yadav and S.I. Syed Ahmad Khan were clearly mentioned.

Regarding breach of principles of natural justice - both the contemnors appeared before the Additional Director General of Police and gave their statements. It was open to them to cross-examine any witness deposed against them, which opportunity they did not avail. Since the contemnors have not availed of this opportunity before the Enquiry Officer, the plea of non-observance of principles of natural justice is not tenable. S.I. Sakaldeo Yadav, at that particular time, was the President of Bihar Police Officers' Association. S.I. Syed Ahmad Khan was the Secretary of the Association. As President and Secretary of the Association, they were expected to have first hand information about each and every incident in connection with the affairs of the police personnel. In fact, they would be the first person to be informed of any incident in connection with the welfare of the police personnel. In the deposition before the Additional Director General of Police, Srikant Kachhap - Police Inspector-cum-Officer-in-charge, had categorically stated that at about 2.45 P.M. he got information that the District and Sessions Judge had detained officer in-charge of Bikramganj and he also got the information that the President of Bihar Police Association S.I. Sakaldeo Yadav and Secretary S.I. Syed Ahmad Khan had departed from Police Line Dehri and going towards court campus. The contemner Sakaldeo Yadav had stated that on 19.1.2002, he was at his residence at Dehri. At about 4.15 P.M. the contemner S.I. Syed Ahmad Khan, who is the Secretary of the Association, had informed him that the District Judge had detained the Officer Incharge of Police Station Bikramganj. He has also stated that on that date he had reached Sasaram at 1645 hrs. This contention has been rightly rejected by the Additional Director General of Police and also by the High Court. At the Bar it is not disputed by counsel on both sides that the distance from Dehri to Sasaram is about 37-38 km. If the statement is believed that he received the information at 4.15 P.M., it is impossible that he reached Sasaram at 4.45 P.M., i.e. within 30 minutes of the receipt of the information. It is utterly impossible to cover a distance of 37-38 kms. within 30 minutes, unless one travels in a jet speed all throughout. This would clearly show that the two contemnors were at Sasaram at the time of the incident and in fact they led the mob in shouting slogans in abusive language

and vandalism against the Judge and the judicial officers. It is, therefore, clear that these two officers set up false defence to escape punishment. The fact that they put up false defence is also clearly indicative of their presence at the spot and participation at the time of the incident.

We now proceed to dispose of the argument advanced by Mr. Jaspal Singh, learned Senior counsel that the High Court was incompetent to initiate the contempt proceedings. It is urged by Mr. Jaspal Singh, learned Senior counsel that the contempt proceedings initiated against the contemnors are hit by proviso to Section 10 of the Contempt of Courts Act, 1971 as according to him Section 345, Crl. Procedure Code, 1973 empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under Section 175, 178, 179, 180 or Section 228 of the Penal Code in the view or presence of the court.

To answer this question, it will be relevant to make a quick survey of Section 345 of the Code of Criminal Procedure, 1973 which corresponds to Section 480 of the earlier Criminal Procedure Code. Section 345 reads:

"345. Procedure in certain cases of contempt. - (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult."

A fascicule reading of Section 345 of the Code it is clear that offences under Section 175, 178, 179, 180 or 228 would constitute contempt only if they are committed in the view or presence of the Court. This would also show that offences under Sections 175, 178, 179, 180 or 228 per se do not amount to contempt. They are contempt only if they are committed "in the view or presence of the Court", otherwise they remain offences under the Indian Penal Code simpliciter.

In the present case the alleged slogan shouting and leveling abusive language against the Judge took place outside the Court. Therefore, the District and Sessions Judge rightly has not taken any action under Section 345 of the Code of Criminal Procedure and, therefore, the jurisdiction of the High Court would not be ousted. The rational behind it is quite obvious. There would be no reason why the High Court should invoke its jurisdiction when the Court against whom contempt is committed, in the view or presence of the Court, can itself take action. Thus, bar of the jurisdiction of the High Court imposed by proviso to Section 10 of the Contempt of Courts Act is not attracted in the cases where the offences under Sections 178, 179, 180 and 228 of the IPC are not committed in the view or presence of the Court.

Similar question was raised before the Constitution Bench of this Court in the case of Bathina Ramakrishna Reddy vs. State of Madras reported in AIR 1952 SC 149. This Court considered the ambit of Section 2(3) of Contempt of Courts Act (1926). This is in para-materia to the proviso to Section 10 of the Contempt of Courts Act, 1971. In this case defamatory statements were made. Action in contempt was taken. It was

argued that the allegations amounted to an offence of defamation and consequently jurisdiction of High Court was barred. This argument was negatived. It was held that jurisdiction of the High Court is excluded only in cases when the acts alleged are punishable as contempt under specific provisions of Indian Penal Code. It is held that if the act alleged merely amounts to an offence of other description for which punishment is provided for in the Indian Penal Code, then the jurisdiction of the High Court to take cognizance is not taken away. In this case it also held as follows:-

"(9) It may be pointed out in this connection that although the powers of the High Courts in India established under the Letters Patent to exercise jurisdiction as Superior Courts of Record in punishing contempt of their authority or processes have never been doubted, it was a controversial point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could, like the Court of King's Bench in England, punish contempt of courts subordinate to it in exercise of its inherent jurisdiction. The doubt has been removed by Act XII (12) of 1926 which expressly declares the right of the High Court to protect subordinate Courts against contempt, but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This seems to be the principle underlying S. 2(8), Contempt of Courts Act. What these cases are, need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of S. 480, Criminal P.C., which empowers any civil, criminal or revenue Court to punish summarily a person who is found guilty of committing any offence under Ss. 175, 178, 179, 180 or S. 228, Penal Code in the view or presence of the Court. We are not prepared to say, as has been said by the Patna High Court in *Jyanendra Prasad v. Gopal*, 12 Pat.172 that the only section of the Indian Penal Code which deals with contempt committed against a Court of justice or judicial officer is S.228. Offences under Ss. 175, 178, 179 and 180 may also, as S. 480, Criminal P.C. shows, amount to contempt of Court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case. It is well known that the aim of the contempt proceeding is "to deter men from offering any indignities to a Court of justice" and an essential feature of the proceeding is the exercise of a summary power by the Court itself in regard to the delinquent. In the cases mentioned in S. 480, Criminal P.C., the Court has been expressly given summary power to punish a person who is guilty of offending its dignity in the manner indicated in the section. The Court is competent also under S.482, criminal P.C. to forward any case of this description to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under S.480. Again the Court is entitled under S. 484, to discharge the offender on his submitting an apology, although it has already adjudged him to punishment under S.480 or forward his case for trial under S. 482. The mode of purging contempt by tendering apology is a further characteristic of a contempt proceeding. It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate Courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under S.2 (3), Contempt of Courts Act, but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code."

(emphasis supplied)

In the case of State of Madhya Pradesh vs. Revashankar reported in AIR 1959 SC 102 allegations were made which amounted to insult. The argument was that an offence under Section 228 IPC was made out and thus the High Court had no jurisdiction. Thus, an identical argument was made. Such an argument was negated. This court held that if the conduct is one which scandalizes the Court and impairs administration of justice, the jurisdiction of the High Court would not be barred. In the present case also it is not a mere personal insult to the District Judge. Such conduct of police officers scandalizes the Court itself and impairs administration of justice inasmuch as it tends to demoralize the judicial officers and makes it difficult for them to perform their duties fearlessly. We, therefore, reject this submission.

In the result, there is no merit in the appeals and they, accordingly, stand dismissed.