

PETITIONER:
DR. L.P. MISRA

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 26/08/1998

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This batch of criminal appeals arise out of an order dated July 15, 1994 in Criminal Misc. Case No. 2058 (c) of 1994 passed by the Division Bench of the Allahabad High Court, Lucknow Bench at Lucknow, holding the appellants guilty under the Contempt of Courts Act and awarding a sentence to each one of them of imprisonment for one month and a fine of Rs. 1,000/-; in default of payment of fine to undergo further imprisonment for fifteen days.

2. We do not deem it necessary at this stage to set out in detail the allegations which led to the present proceedings. Suffice it to refer to the relevant recitals in the impugned order relating to the present action.

3. On 15th July, 1994, the Division Bench comprising of Mr. Justice B.M.Lal and Mr. Justice A.P.Singh commenced its proceeding and in fact some of the cases listed before it were heard. While hearing Writ Petition No. of 1994 (Deoki Nandan Agarwal Vs. Commissioner, Faizabad Division and others), Dr. L.P. Misra, Advocate-appellant in Carl. Appeal No. 483 of 1994 along with his associates entered in the court room raising slogans and asking the Court to rise and stop functioning. The Court, however, continued to function whereupon Dr. L.P. Misra along with Shri A.K. Bajpaie, Shri Anand Mohan Srivastava, Shri Y.C. Pandey and Shri Shamim Ahmad (appellants in connected appeals) came on the dias and tried to manhandle and in that process Dr. L.P. Misra caught hold of Justice A.P. Singh forcing the court to rise and then used abusive language against Justice B.M. Lal in the following words :-

"TUM SHALE UTTH JAAO NAHIEN TO JAAN
SE MAAR DAALLENGE. TUMNE CHIEF
JUSTICE SE KAHA HAI KI LUCKNOW KE
JUDGES 5000/- RUPYA LEKAR STAY
GRANT KARTE HAI AUR STAY EXTEND
KARTE HAIN AAJ 2 BAJE TAK AGAR TUM
APNA BORIYA BISTAR LEKAR YAHAN SE
NAHIEN BHAG JAATE HO TO TUMHE JAAN
SE MAAR DAALLENGE."

In view of an alarming and threatening situation, the Court was forced to retire and consequently both the Hon'ble

Judges retired to the chamber of Justice B.M. Lal. Dr. L.P. Misra then entered the chamber and repeated the same uncivilised language and extended the same threat. It was because of intervention Of Shri J.N. Bhalla, Addl. Chief Standing Counsel, State of U.P and some members of the staff of the Court who persuaded Dr. L.P. Misra and others to leave the chamber. After some time, the court reassembled and took a serious note of contemptuous conduct on the part of the appellants and in exercise of it's power under Article 215 of the Constitution of India passed the following order :-

"This clearly amounts to grossest contempt of the Court, interference in the administration of justice and insult to the court as it scandalises the court and lowers the authority of the Court. Therefore, in our considered opinion, Dr. L.P. Misra, Sri A.K. Bajpaie, Sri Anand Mohan Srivastava, Sri Y.C. Pandey and Sri Shamim Ahmad, Advocates, are ex facie guilty of contempt of court and accordingly in exercise of powers conferred by Article 215 of the Constitution of India, this Court hereby sentence aforesaid advocates, namely (1) Dr. L.P. Misra , Advocate, (2) Sri A.K. Bajpaie, Advocate, (3) Sri Anand Mohan Srivastava, Advocate and (4) Sri Shamim Ahmad, Advocate with imprisonment for one month and fine of Rs. 1,000/- (Rupees one thousand) each and in default of payment of fine they shall undergo further imprisonment for 15 days."

The court further directed the Addl. Registrar of the said court to take steps forthwith for execution of this order.

4. It is against this order dated 15th July, 1994 passed by the High Court, that the appellants have filed these Criminal Appeals under Section 19 of the Contempt of Courts Act, 1971.

5. At the outset, we make it clear that the above recitals are taken from the impugned order which are denied by the appellants. In the view which we are inclined to take at this stage, we have refrained ourselves from going into the merits of the case.

6. Mr. Dwivedi, Learned Senior Counsel appearing for the appellant in Crl. Appeal No. 483 of 1994 assailed the impugned order principally on the ground that the court while passing the said order did not follow the procedure prescribed by law. Counsel urged that the court had failed to give a reasonable opportunity to the appellants of being heard. Assuming that the incident as recited in the impugned order had taken place, the court could not have passed the impugned order on the same day after it reassembled without issuing a show cause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct. The minimal requirement of following the procedure prescribed by law had been overlooked by the Court. In support of his submission, Counsel drew our attention to Section 14 of the Contempt of Courts Act, 1971 as also to the provisions contained in Chapter XXXV-E of the Allahabad High Court

Rules, 1952. Emphasis was laid on Rule 7 and 8 which read as under :-

"7. When it is alleged or appears to the Court upon its own view that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and at any time before the rising of the Court, on the same day or as early as possible thereafter, shall-

(a) cause him to be informed in writing of the contempt with which he is charged, and if such person pleads guilty to the charge, his plea shall be recorded and the Court may in its discretion, convict him thereon,

(b) if such person refuses to plead, or does not plead, or claims to be tried or the Court does not convict him, on his plea of guilt, afford him an opportunity to make his defence to the charge, in support of which he may file an affidavit on the date fixed for his appearance or on such other date as may be fixed by the court in that behalf.

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either forthwith or after the adjournment, to determine the matter of the charge, and

(d) make such order for punishment or discharge of such person as may be just.

8. Notwithstanding anything contained in Rule 7, where a person charged with contempt under the rule applies, whether orally or in writing to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof."

Counsel urged that the impugned order is totally opposed to the principles of natural justice and, therefore, unsustainable on this score alone. He, therefore, urged that the impugned order be quashed and set aside.

7. Learned Counsel appearing for the other appellants

adopted the same arguments.

8. We heard Learned Solicitor General who was requested to appear and assist the Court.

9. After hearing learned counsel for the parties and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances, the impugned order cannot be sustained.

10. The next question that needs to be considered by us is as to what proper order could be passed in the circumstances of this case.

11. The incident in question had taken place at Lucknow Bench of the Allahabad High Court. With a view to avoid embarrassment to the parties and since both the learned Judges ceased to be the Judges of the Allahabad High Court, it would be in the interest of justice to transfer the contempt proceedings to the principal seat of the High Court at Allahabad. The learned Chief Justice of the Allahabad High Court is requested to nominate the Bench to hear and dispose of the above contempt proceedings. It is needless to state that the procedure prescribed under Chapter XXXV-E of the Allahabad High Court Rules, 1952 will be followed. We also request the High Court to dispose of the case as early as possible and preferably within six months from the date of receipt of the copy of this order.

12. For the foregoing conclusions, the Criminal Appeal No. 483 of 1994 and other connected criminal appeals filed by the contemnors are partly allowed. The impugned order dated 15th July, 1994 passed by the High Court in Criminal Misc. Case No. 2058 (C) of 1994 is set aside and the proceedings are remitted to the principal seat of the Allahabad High Court, Allahabad. The Registry is directed to send the copy of this order to the learned Chief Justice of Allahabad High Court for appropriate action. All the criminal appeals to stand disposed of accordingly.