

CASE NO.:
Appeal (crl.) 603 of 1998

PETITIONER:
Dr. Prodip Kumar Biswas

RESPONDENT:
Subrata Das & Ors.

DATE OF JUDGMENT: 02/04/2004

BENCH:
Y.K. Sabharwal & S.B. Sinha.

JUDGMENT:
J U D G M E N T

[With Criminal Appeal No.795 of 1998]

Y.K. Sabharwal, J.

These two appeals have been filed under Section 19 of The Contempt of Courts Act, 1971 (for short, 'the Act'). In one of the appeals, the challenge is to the impugned judgment and order of the High Court whereby the appellant has been held guilty of criminal contempt of court and fine of Rs.2,000/- has been imposed upon him. The main grievance that has been urged by learned counsel in support of the appeal is that the High Court before holding the appellant guilty and imposing fine neither issued any notice nor afforded any opportunity of hearing to the appellant. In the second appeal, the challenge is to the impugned order of the High Court whereby the appellant was directed to be taken into custody forthwith though later on the same date, he was ordered to be released on bail. Both the appeals are offshoot of the same litigation pending in the High Court in respect whereof we may make a brief reference.

Respondent No.1 filed Writ Application (WP No.20305(W) of 1997) in the Calcutta High Court, inter alia, praying that the State-respondents be directed to take appropriate action against the appellant and the institutions run by him and he be stopped from deceiving public by issue of publications and advertisements in different newspapers making false claims giving an impression that only his institution on alternative medicines was recognized by the Department of Health and Family Welfare, Government of West Bengal and approved by Medical Council of India as also by the High Court of Calcutta. It was claimed that by such false representations, the writ petitioner (respondent No.1 herein) had been duped; made payment of the requisite fee and took admission in the Medical College of Alternative Medicines run by the appellant. In another Writ Application (WP No.1437/97) filed by one Mr. Bidyut Kumar Guha Roy, allegations had been made against one Dr. S.K. Agarwal and his institution on alternative medicines viz. Indian Board of Alternative Medicines and Open International University for Alternative Medicines. In the said writ petition neither the appellant or his institution nor respondent No.1 were parties.

The writ application of Respondent No.1 was disposed of by learned Single Judge of the High Court in terms of the order passed in Writ Petition No.1437 of 1997. The order of the learned Single Judge was challenged in appeal (MAT No.462 of 1998) filed by respondent No.1. One of the grounds urged in the appeal was that the subject matter of Writ Petition No.1437 of 1997 was different from the subject matter of Writ Petition No.20305(W) of 1997 and the learned Single Judge committed serious illegality in not going into the merits and merely disposing of the writ petition in terms of the order passed in Writ Petition No.1437 of 1997. By the impugned judgment, the learned Division Bench held that it was the duty of the learned Single Judge to disposed of the Writ Petition No.20305(W) of 1997 on merits. The Bench further held that instead of remanding the matter, Writ Petition No.20305(W) of 1997 can be disposed of by restraining the appellant herein and his institutions from using the name of the court or giving reference to

any case decided by the Calcutta High Court either in the prospectus or in any advertisement so that no impression is created in the mind of the public that High Court has approved the said institutions or recognized those as having authority to impart knowledge about the system of alternative medicine.

The issue in these appeals is not about the correctness of the judgment of the High Court in disposing of the appeal and the writ petition of Respondent No.1 in the aforesaid manner. However, by the same judgment and order, the Division Bench held the appellant guilty of criminal contempt of court and imposed fine on him, as earlier noticed. We are concerned only with the part of the order that deals with the contempt aspect.

The impugned judgment and order of the High Court shows that during hearing of the appeal, counsel for the appellant submitted before the Division Bench that his client in future either in the prospectus or in any advertisement would not make reference to any case decided by the High Court. But no sooner the counsel after making the submission left the court after taking leave of the court, attention of the court was drawn to a supplementary affidavit that had been filed by the appellant in the appeal without leave of the court. It was filed on the same date when the counsel concluded the argument and left the court, namely, 29th April, 1998. It was, inter alia, stated in that affidavit that Hon'ble the Chief Justice along with some other judges of the Calcutta High Court attended the 5th International Conference of Alternative Medicines held at Park Hotel, Calcutta on 1st December, 1997 along with Dr. S.K. Agarwal, President, Indian Board of Alternative Medicines who was facing forgery charge for forging the seal and signature of the learned 5th Assistant District Judge, Alipore. The newspapers carrying photographs were annexed to the said affidavit. The impugned order further records that on the next date of hearing, i.e., 30th April, 1998 the appellant was personally present in court and his counsel prayed for time till 5th May, 1998 to file unqualified apology for affirming false statement in the affidavit that had been earlier filed by the appellant as noticed by the Court on 29th April, 1998. One of the false averments in that affidavit that has been noticed by the Division Bench is about the photograph of Chief Justice of the Calcutta High Court being along with Dr. S.K. Agarwal. The impugned order, inter alia, records that the person standing next to the Chief Justice was not Dr. S.K. Agarwal but was another Hon'ble Judge of the High Court and the persons not recognizing the Chief Justice and the said learned Judge may get confused and believe that Dr. S.K. Agarwal was standing next to the Chief Justice. The said photograph shows that between the Chief Justice and Dr. S.K. Agarwal, another learned Judge of the High Court was standing, though Mr. Ganguly, learned senior counsel appearing for the appellant, points out that strictly speaking in the photograph, learned Chief Justice may not be standing along with Dr. S.K. Agarwal as another learned Judge was standing in between the two, but it is of neither any consequence nor any motive of the appellant can be attributed on that account.

With reference to the affidavit that was filed by the appellant tendering unqualified apology, the impugned order holds that the same is not in tune with the submissions that were made by learned counsel for the appellant on 30th April, 1998. The impugned order notices that the affidavit declares that it has been filed in compliance with the direction of the court, though there was no such direction. The affidavit tendering apology sought to explain how inadvertently the name of the other Judge who was in between Dr. Agarwal and the Chief Justice was omitted to be mentioned. The affidavit further states in the penultimate paragraph that as per the directions of the court, the appellant gives undertaking to the Hon'ble Court that he shall not make any newspaper advertisement on behalf of the institutions stating that those institutions are approved and recognized by Hon'ble High Court of Calcutta. These are the circumstances under which the appellant has been found guilty of criminal contempt of court for creating an impression in the mind of the public that his institutions have been approved by the High Court for imparting education for alternative medicine and a fine of Rs.2,000/- imposed on the appellant failing which he has been directed to undergo simple imprisonment for seven days. This judgment and order dated 11th May, 1998 is subject matter of challenge in Criminal Appeal No.603 of 1998.

Respondent No.1 herein in MAT No.462 of 1998 filed another contempt petition (CPA No.1054 of 1998) on 4th June, 1998 drawing the attention of the Division Bench to the fact that the appellant was still using the name of the High Court in the website and as such continued to violate the order of the Court. That contempt petition was taken up on 10th July, 1998, when the learned Division

Bench passed the impugned order observing therein that it was satisfied that the case of gross and deliberate disobedience of the directions of the court had been made out; and since the allegations of respondent No.1 are supported by strong and cogent evidence and the contemnor has chosen to violate the directions of the court when he has already been convicted for his contumacious behaviour and conduct in course of the proceedings before the court, he shall be taken in custody of the court and remanded to prison until further orders subject to his right to seek release on condition of bail, if so advised. The appellant was directed to be taken into custody forthwith and remanded to prison. The Deputy Sheriff of the court was directed to take him into custody and place him with the Superintendent Presidency Jail who was directed to accept him for purpose of compliance of the order of the court. After passing of the order, on application for grant of bail, the appellant was directed to be released on bail on execution of personal bond and surety with undertaking to appear before the Court. In terms of the said order, he was released on bail. This order dated 10th July, 1998 is subject matter of Criminal Appeal No.795 of 1998. Incidentally, it may be noted that in this regard, the submission of Mr. Ganguly is that the appellant had taken steps for deletion of the offending portion from the website which had been opened before the order dated 11th May, 1998 and in case the reference to the court was continuing in some of the websites, it was on account of bona fide inadvertent error. The main contention urged in support of the appeal is that the appellant was directed to be taken into custody without following the procedure envisaged by the Act and the Rules framed by the High Court under the Act and without affording any opportunity let alone a reasonable opportunity to the appellant to defend himself.

From the facts aforementioned, it cannot be seriously disputed that the appellant was not granted reasonable opportunity before passing of the impugned judgment and order dated 11th May, 1998 or the impugned order dated 10th July, 1998. It is clear from the narration of facts that on the Division Bench not being satisfied about the contents and tenor of the affidavit dated 29th April, 1998, counsel for the appellant sought an opportunity to file an affidavit tendering apology. That affidavit was tendered by the appellant on 5th May, 1998. It is not in dispute that after filing of the affidavit dated 5th May, 1998, no hearing took place. In fact, it seems that no hearing took place after 30th April, 1998. At no stage was the appellant noticed of the contempt. After the conclusion of submissions of counsel for the appellant on 29th April, 1998, the court found that without leave of the court, an affidavit affirmed on the same date had been filed by the appellant. The matter was posted on the next day when counsel for the appellant asked for time to file affidavit of apology which was filed on 5th May, 1998 and the impugned order passed on 11th May, 1998, without their being hearing after 30th April. The main issue before the Court was about the appellant giving out in advertisements and prospectus that his institution has been approved by the High Court. The Division Bench, as above noticed, instead of remanding the writ petition for disposal before the Single Judge restrained the appellant from using the name of the court by the same judgment and order dated 11th May, 1998 by which he was held to be guilty of contempt. When respondent No.1 again moved the Court, by the impugned order dated 10th July, 1998, the appellant was taken into custody, then released on bail and thereafter time was granted to file reply to contempt application.

The procedure to initiate contempt proceedings has been laid down in the Act. Section 14 lays down the procedure when the contempt is in the face of the Supreme Court or a High Court. The case in hand is not covered by Section 14 of the Act. It is not a case of contempt in the face of the Court. That was also not the submission urged on behalf of Respondent No.1. In the case of a criminal contempt, other than a contempt referred to in Section 14 of the Act, the procedure to take cognizance has been laid down in Section 15 of the Act. Sub-section (3) of Section 15, inter alia, provides that every motion or reference made under the section shall specify the contempt of which the person charged is alleged to be guilty. The procedure to be followed after taking cognizance has been provided for in Section 17 of the Act. Section 17 provides that notice of every proceeding under Section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise. It also sets out the documents which are required to be accompanied with the notice. The Calcutta High Court, in exercise of powers conferred by Section 23 of the Act and Article 215 of the Constitution of India has made rules to regulate the proceedings for contempt of itself or of a court subordinate to it under the Act being the Contempt of Courts Calcutta High Court Rules, 1975. Rule 19, inter alia, provides that the Court may

issue rule nisi. It further provides that the rule nisi shall be drawn up, as far as may be, in the model form in Form No.1, Appendix 1. Rule 20, inter alia, provides that where a rule is issued by the Court on its own motion under Rule 15, the rule nisi shall be drawn up, as far as may be, in the model form in Form No.2, Appendix 1. Rule 29 provides that the respondent or the contemnor may file an affidavit showing cause and the petitioner may file a reply thereto within such time as may be directed by the Court. The court may, however, in a contempt proceeding take such evidence as may be considered necessary. Admittedly, rule nisi was not drawn up. In fact, it seems that neither any notice of contempt was issued to the appellant nor any hearing took place except what has been noticed hereinbefore.

The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. {See Supreme Court Bar Association v. Union of India & Anr. [(1998) 4 SCC 409]}.

The contempt proceedings should not be initiated lightly. Since, in the present case, in the face of the infirmities abovenoticed, the impugned judgment and order cannot be sustained, one course that can be adopted is to remand the contempt case for its fresh decision by the High Court, after due observance of the rules and affording opportunity to the appellant and the other course that can be adopted is to dispose of the contempt case as also these appeals on the basis of an affidavit dated 25th March, 2004 that has been filed by the appellant in this Court. We are of the view that it would be expedient to adopt the later course which would meet the ends of justice. In the affidavit dated 25th March, 2004 the appellant has undertaken not to mention the name of the High Court in any advertisement or publicity in connection with his institution in future. In the light of this affidavit, on the facts of the present case, we do not think that any useful purpose will be served in continuing with the contempt proceedings against the appellant.

In the light of the aforesaid, we set aside the impugned judgment and order dated 11th May, 1998 and also the impugned order dated 10th July, 1998 and dispose of the contempt case by accepting the undertaking of the appellant as contained in his affidavit filed in this Court.

The appeals are disposed of accordingly.