

CHANDRA SHASHI
v.
ANIL KUMAR VERMA

NOVEMBER 14, 1994

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Contempt of Courts Act, 1971—Section 2 (c)—Criminal Contempt—Filing of forged and fabricated document in Court with intention to defraud—Whether amounts to contempt of Court—Held, Yes—Offer of unconditional apology rejected on the ground that it cannot be used as a weapon of defence to get purged of the guilt—Sentence of two week's imprisonment imposed.

Suo motu contempt action has been taken against respondent for his having filed a fabricated document to oppose the prayer of his wife seeking transfer of a matrimonial proceeding from Delhi to Unnao.

The experience certificate purportedly from the Principal of a college was not accepted on the face of the affidavit of the Principal himself, according to whom, the certificate was a 'forged and fabricated document'. The contemner has not been successful, despite opportunity having been given to produce any supporting material.

The question whether filing of the forged and fabricated document amounts to contempt. According to the respondent, this does not. An offer of unconditional apology was tendered by the respondent. It was stated that if he would be punished, his life would 'get shattered.'

Disposing of the matter, this Court

HELD : 1.1. If the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid *mens rea*. In the case at hand the fabricated document was apparently to deceive the Court; the intention to defraud is writ large. (471-D)

St. James Evening Post case, 1742-2 Atk 469; Attorney General v. Times Newspaper, (1974) AC 273; In the matter of Moses Amado Taylor, (1912) AC 347, Relied on.

A 1.2. A perusal of the offer of unconditional apology tendered shows that this was done after the deponent formed an impression when the matter was argued in Court that this Court was of the view that he had committed wrong. The affidavit stated that if he would be punished, his life would 'get shattered', as after his divorce proceeding was completed recently he could secure a job and has started his 'life afresh'. Thus the apology tendered is not a product of remorse or contrition, which it has to be to merit acceptance. Had the contemner shown real contriteness and regret from the act done, this Court would have perhaps accepted his apology; but it cannot be used as a weapon of defence to get purged of the guilt, which precisely the contemner has sought to do as he desires to avoid worldly suffering which would follow if sentenced. This offer of unconditional apology is rejected.

(471-E-F, 472-A)

D *M.B. Sanghi v. High Court of Punjab and Haryana*, [1991] 3 SCC 600; *Major General B.M. Bhattācharya v. Russel Estate Corporation*, [1993] 2 SCC 533 and *K.A. Mohammed Ali v. C.N. Prasannan*, JT (1994) 6 SC 584, relied on.

E 1.3. A sentence of fine would not be conducive to the larger cause of maintenance of purity in the portals of Court in as much as if a fabricated document with oblique motive can be filed in the apex Court, a serious view of the same has to be taken to maintain a medium of fairness in Courts below. This apart, the increasing tendency of taking recourse to objectionable means to get a favourable verdict in the Courts has to be viewed gravely to deter the large number of persons approaching Courts from doing so. Such a tendency is required to be curbed, which requires somewhat deterrent sentence. (472-C)

F 1.4. Sentence of two weeks imprisonment is awarded to the contemner. The Court would have indeed awarded a longer period of incarceration because of the gravity of the contumacious fabrication of document to defeat the just cause of an adversary and thereby seriously affecting the purity of Courts' proceeding— but this Court has refrained from doing so as this is the first occasion in free India when this Court (for that matter may be any Court of the Country) has felt called upon to send a person like the contemner behind iron bars in exercise of contempt jurisdiction. This Court has restricted the period of imprisonment to two weeks in the hope that the incarceration of this contemner will work as eye opener and no Court will henceforth feel constrained to do so in any other case. This Court has traversed untreaded path guardedly because the assumption of contempt

jurisdiction by a Court requires jealous and careful movement as the affected party faces a summary trial and the prosecutor himself acts as a Judge. (472-D-E) A

CIVIL ORIGINAL JURISDICTION : *Suo Motu Contempt.*

IN B

Transfer Petition (C) No. 835 of 1993.

Ms. Biraj Tiwari for the Petitioner.

A.K. Ganguli, M.D. Adkar, A.K. Verma and Ejaz Maqbool for the Respondent. C

The Judgment of the Court was delivered by

HANSARIA, J. The stream of administration of justice has to remain unpolluted so that purity of courts' 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 enable it to administer justice fairly and to the satisfaction of all concerned. D

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. E

3. These prefatory remarks well project the importance of the point under consideration in this *suo motu* contempt action taken against respondent Anil Kumar for his having filed a fabricated document to oppose the prayer of his wife seeking transfer of a matrimonial proceeding from Delhi to Unnao. It shall be first required to be seen whether Anil did file a fabricated document and then we shall address ourselves as to whether filing of a forged document with intention to defraud amounts to contempt of court, as has this expression been defined in Section 2 of the Contempt of Courts Act, 1971 (the Act). F G

4. In so far as the first aspect is concerned, we entertain no doubt, as the case put by Anil contemner in his show-cause that the Experience H

- A Certificate dated 4.3.1993 purportedly from the Principal, V.S.S.M. Inter College, Moti Nagar, Unnao, had been signed by Khem Chandra, the Principal, is not acceptable on the face of the affidavit of the Principal himself, according to whom, the certificate is a "forged and fabricated document". The averments in the show-cause filed by Anil, after issuance of contempt notice, that he had contacted one A.K. Mathur, working as Addl. General Manager in Ordnance Factory at Kanpur, who in turn spoke to one V.K. Upadhyay, Manager of the Armapur Gas Agency at Kanpur, who ultimately obtained the certificate, have nothing to commend in as much as the contemner has not been successful, despite opportunity having been given, to produce any supporting material either from Shri Mathur or Shri Upadhyay. The further statement in the show-cause that three other teachers of the college used to sign in the name and as Khem Chandra and that Shri Khem Chandra, the Principal himself, signed in different styles has really made the matter worse. These averments made in the show-cause do not merit acceptance and we entertain no doubt that Anil had filed a forged and fabricated document to resist the prayer of his wife to get the matrimonial proceeding transferred on the ground of her poverty i.e. it was done with an oblique motive.

5. The real question is whether filing of the aforesaid forged and fabricated document amounts to contempt. According to Shri Ganguli, appearing for Anil Kumar, this does not. Let it be seen whether the contention advanced by Shri Ganguli is tenable.

6. In Section 2 (a) of the Act 'contempt of court' has been said to mean civil contempt or criminal contempt. The latter expression has been defined in section 2 (c) to mean the publication of a matter which, *inter alia*, interferes or tends to interfere with due course of any judicial proceeding, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice.

7. There being no decision of this Court, (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure (which was highlighted more than two and half centuries ago by Lord Hardwicke, L.C. in *St. James Evening Post* case, 1742-2 Atk 469) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples. The purpose of

contempt jurisdiction was summarised as below by Lord Morris in *Attorney General v. Times Newspapers*, (1974) AC 273 at page 302: A

“In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering 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.” B C

8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-verification and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that ‘सत्यमेव जयते’ (truth alone triumphs) is an achievable aim there; or ‘यतो धर्मस्यो जय’ (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts. D E

9. The aforesaid thoughts receive due support from the definition of criminal contempt as given in section 2 (c) of the Act, according to which an act would amount to be so if, *inter alia*, the same interferes or tends to interfere or obstructs or tends to obstruct the administration of justice. The word “interfere”, means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at page 255 of Words and Phrases (Permanent Edition), Volume 22. As per what has been stated in the aforesaid work at page 147 of Volume 29 obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do. F G H

A 10. A reference to standard text books on contempt, to wit, C.J. Miller's 'Contempt of Court'; Oswald's 'Contempt of Court'; and Anthony Arlidge and David Eady's 'The Law of Contempt' would amply bear what has been stated above; and that if a forged and fabricated document is filed, the same may amount to interference with the administration of justice. Of course, for the act to take this colour there is required to be an element of B deceit or the knowledge of the statement being forged or fabricated. This is what finds place at pages 399 to 401 (2nd Edn.); page 62 (1993 Reprint); and pages 186 and 188 (1982 Edn.) respectively of the aforesaid treatise.

C 11. These statements are based on some important decided cases. It would be enough for our purpose to note two such decisions, one of which is by the Privy Council and the other by a King's Bench Division.

D 12. In the Privy Council case titled *In the Matter of Moses Amado Taylor*, (1912) A.C. 347, which was on appeal from the Supreme Court of Sierra Leone, what had happened was that the appellant, a barrister, who had enrolled as solicitor of the Supreme Court of the said Colony, applied to the Acting Chief Justice for a warrant for the arrest of one Wright on the ground that he was about to leave the settlement, despite his owing some money to his client. This prayer was rejected. Subsequently, an application was made to one of the police magistrates for a warrant for the arrest of the same person upon a criminal charge of assault and a warrant was issued E accordingly. As the Acting Chief Justice had earlier refused the warrant, the Supreme Court felt that the entire proceeding initiated by the appellant was an abuse to the process of justice and it was held that the appellant, by initiating the criminal proceedings, was influenced by the intention of defying the Acting Chief Justice who refused the civil warrant of arrest; and F being of this view the appellant was held guilty of contempt and his name was ordered to be removed from the roll of barristers and solicitors of the Supreme Court in question, apart from being fined. On appeal being preferred to the Privy Council, it was held that as the evidence did not show any intent to defraud on the part of the appellant no contempt was committed; at the most he had committed an irregularity for which some G pecuniary penalty was adequate punishment. The importance of this case for our purpose is that had the Privy Council felt satisfied about intent to defraud, the appeal would have been dismissed and the view taken by the Supreme Court of Sierra Leone that the appellant was guilty of contempt would have been upheld. What emerges from this decision is that if a H person does anything to defraud the court, he commits its contempt.

13. The King's judgment was rendered in *Rex v. Weisz (Ex parte Hector MacDonald LD.)*, [1951] 2 K.B. 611, Lord Goddard, CJ. (speaking for the Court) held the action of the type, which was one of recovery of money on the basis of account stated though there was none, an abuse of the process of the court but not *per se* a contempt. It was however added that if the attempt were to deceive by disguising the true nature of the claim, the same would be contempt. On the facts of the case it was found that the solicitor firm had committed contempt as it had endorsed the writ (which was for money won at betting) for a fictitious, though apparently a legal cause of action, as Parliament had ordained that courts are not be used for realising such monies. The action was, therefore, regarded as an interference with, or distortion of, the course of justice. (A different view was, however, taken insofar as the litigant himself was concerned as he had done nothing to bring a feigned issue before the court).

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid *mens rea*. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt.

15. Before applying our mind to the question of sentence, we would advert to an offer of unconditional apology tendered by Anil Kumar in his affidavit filed on 29.10.94. A perusal of the same shows that this was done after the deponent formed an impression, when the matter was argued in court in his presence on 24th October (on which date the judgment was also reserved), that we were of the view that he had committed wrong. The affidavit further states that if he would be punished, his life would "get shattered", as after his divorce proceeding was completed recently he could secure a job and has started his "life afresh". Thus, the apology tendered is not a product of remorse or contrition, which it has to be merit acceptance, as stated in *M.B. Sanghi v. High Court of Punjab and Haryana*, [1991] 3 SCC 600, in which case it was also pointed out that an apology merely to protect against rigours of law is no apology. In *Major General B.M. Bhattacharjee v. Russel Estate Corporation*, [1993] 2 SCC 533, an 'unconditional apology' while trying to justify the act (similar is the position here as would appear from the averments made in paragraph 5 of the aforesaid affidavit) was not accepted. Recently, in *KA Mohammed Ali v. CN Parasannan*, JT (1994) 6 SC 584, a belated apology sought was refused.

A 16. Had the contemner shown real contriteness and regret for the act done, we would have perhaps accepted his apology; but as it cannot be used as a weapon of defence to get purged of the guilt, which precisely the contemner has sought to do as he desires to avoid worldly suffering which would follow if sentenced, we reject his offer and proceed to decide the question of sentence. Let it be first seen whether sentence of fine would meet the ends of justice. In our view, such a sentence would not be conducive to the larger cause of maintenance of purity in the portals of court inasmuch as if a fabricated document with oblique motive can be filed in the apex Court, a serious view for the same has to be taken to maintain a modicum of fairness in courts below. This apart, the increasing tendency of taking recourse to objectionable means to get a favourable verdict in the courts has to be viewed gravely to deter the large number of persons approaching courts from doing so. Such a tendency is required to be curbed, which requires somewhat deterrent sentence.

D 17. Keeping in view the above, we award sentence of two week's imprisonment to the contemner. We would have indeed awarded a longer period of incarceration because of the gravity of contumacious act - fabrication of document to defeat just cause of an adversary and thereby seriously affecting the purity of courts' proceeding - but we have refrained from doing so as this is the first occasion in free India when this Court (for that matter may be any court of the country) has felt called upon to send a person like the contemner behind iron bars in exercise of contempt jurisdiction. We have restricted the period of imprisonment to two weeks in the hope that the incarceration of this contemner will work as eye opener and no court will henceforth feel constrained and to do so in any other case. We have traversed the untreated path guardedly, because the assumption of contempt jurisdiction by a court requires zealous and careful movement as the affected party faces a summary trial and the prosecutor himself acts as a judge.

18. The proceeding stands disposed of accordingly.

A.G.

Petition disposed of.