

In Re Ram Pratap Sharma and Others

Vs

In Re Daya Nand and Others

Criminal Appeals Nos. 39-40 of 1976

(CJI A.N. Ray, N.L. Untwalia, P.N. Shinghal JJ)

19.08.1976

JUDGMENT

RAY, C.J. –

1. These are appeals under Section 19(1)(b) of the Contempt of Courts Act, 1971 against the judgment and order dated December 1, 1975 of the Full Bench of the High Court of Punjab and Haryana.
2. The appellants wrote a letter on February 20, 1975 to the President with copies to the Prime Minister, Chief Justice of India, the Chief Minister of Haryana and the Chief Justice of Punjab and Haryana High Court. The letter was signed by 15 members of the Bar belonging to the District Bar Association, Bhiwani. In that letter they brought to the notice of the President that Justice D. S. Tewatia of the Punjab and Haryana High Court visited the session division of Bhiwani and inspected the courts from February 14, 1975 to February 19, 1975.
3. In that letter they further stated as follows :

The learned Judge met the members of the Bar of February 15, 1975 in the Bar Room, Bhiwani. During the course of the meeting, the learned Judge criticised the Government's policy in regard to its attitude towards the Judiciary. Besides, the learned Judge was openly attacking the Government in its political as well as administrative decision. On the whole, he gave an impression that he was not a judge but a politician who had come to Bar Room. When the members of the Bar who had gone to meet the learned Judge in the P.W.D. Rest House, Bhiwani he discussed politics with them and criticised the present executive in general and the Congress party in particular. He suggested the members of the Bar to revolt against the present Government as it has suppressed the civil liberation (sic) of the individuals and has also failed miserably in all fields. The Judge further said that the prevailing system of Government is not good in this country and we must adopt the communist form of government which can save the nation. Later on, he had some private political discussion with the local C.P.M. leaders. He also accepted the hospitality of the Technological Institute of Textiles (Mills) people who also took him for a sightseeing from Dadri to Pilani. The members of the District Bar Association highly regret the attitude of Justice D. S. Tewatia and urge the Government to take appropriate action in this regard.

4. Five members of the Bar Association at Charkhi Dadri sent a letter addressed to the President

with copies to the Chief Justice of Punjab and Haryana High Court, the Chief Minister of Haryana, the Chief Justice of India and the Prime Minister. In that letter they said that Justice D. S. Tewatia visited the Bar and inspected the court at Charkhi Dadri on February 17, 1975. Thereafter they stated as follows :

While talking with the members of the Bar, he pointed out that the library of this Bar seems to every poor. Then Shri Virendra Kumar Single, a member of the Bar requested the honourable Judge to help the Bar either by supplying books or by allocating the grant by the High Court so that the needy Bar may be able to purchase necessary books for the library. Then the Honourable Judge turned down the request and replied that it is never possible in the present system of government of India. If you want this kind of help then you should prepare yourself for the communist government in India by creating such atmosphere in the country. At another stage also during the course of his discussion with the members of the Bar over the matter of Rajasthan law students demands in which they demanded a grant of Rs. 5000 from the Government for the library of each fresh law graduate and Rs. 200 per month for a period of two years the initial stage of their legal practice he strongly emphasised the need for the communist system of society and government in India to fulfill these demands. The learned Judge also met Smt. Chandrawati separately and discussed with her the political affairs of the State. He also expressed his desire to see Comrade Dharam Singh a member of the Marxist Communist party at his residence before Smt. Chandrawati. During his stay in the rest house he also discussed the teachers' agitation and individual position of various political leaders' in the State. He also enquired all about Shri Sohan Lal a leader of the teacher's movement in the State.

The letter concluded by saying that the Hon'ble Judge during his entire stay in his tour deliberately showed the bent of his mind towards communism while exchanging views on various matters.

5. The appellants took a copy of their letter to the Chief Justice of Punjab and Haryana. The appellants could not see the Chief Justice and left the letter with the Register in a closed cover. The Registrar told them that the closed cover would reach the Hon'ble Chief Justice.

6. A notice was issued by the High Court on March 12, 1975 as follows :

Letter dated February 20, 1975 a copy of an application dated February 20, 1975 signed by 15 members of the District Bar Association, Bhiwani, has been placed for the consideration of this Bench. On a perusal of the contents thereof, a prima facie case of criminal contempt is made out. We therefore direct that the Contempt of Court (Punjab and Haryana) Rules, 1974 be issued to each of the signatories of the above said application, returnable for the first of April, 1975.

The High Court did not take any action against two persons on the letter written by five members of the Bar Association of Charkhi Dadri.

7. Each of the appellants affirmed an affidavit in this pattern :

It is an article of faith with the deponent that dignity and respect of all courts and of all judges and particularly of the High Court must be maintained for, amongst other reasons, on that depends the orderly functioning of the society as also prestige of the

profession to which the despondent has the honour to belong. The deponent has been taught to believe that a judge ought always to steer clear of all avoidable controversial matters. The dependent most respectfully submits that the contents of the letter which he and others addressed to the President of India cannot be construed as scandalising the Hon'ble Judge or the curtain any manner to weaken people's faith in the administration of justice. The letter in question was addressed by the dependent to the President of India with copies to others with the sole object of conveying the notion that the public expression by the Hon'ble Judge of his personal views on controversial political matters concerning the merits and demerits of the present system of the government was not in keeping with the well-accepted role of proverbial aloofness of a judge. The letter was addressed bona fide, in good faith and without any ill will and no publicity was given to it. It was intended to be a privileged communication made solely with a view to uphold the dignity of the court. In order to prevent unwanted disclosure of its contents, the communications in question was brought personally by two members of the Bar Association, Bhiwani to Chandigarh in a closed cover addressed to the Chief Justice for being handed over to him for his personal attention. The dependent submits that the contents of the letter have no relevant or relation to the functioning of the learned Judge of the High Court. The letter does not interfere much less substantially with the due course of justice or proper administration of law by the courts. The deponent submits that there was no intention whatsoever on his part to scandalise the Hon'ble Judge or this Hon'ble Court or to lower the authority or undermine the prestige of the learned Judge or of the Hon'ble Court or to weaken in any way the confidence of the people in the administration of justice. The deponent respectfully submits that the communication does not bear out any foundation for an action for criminal contempt. In any case, if in view of this Hon'ble Court, the action of the dependent in addressing the letter in question constituted for any reason contempt of court, no one would be more sorry than the dependent himself. Therefore, the deponent tenders his apology to this Hon'ble Court, for the same, and prays for its acceptance.

8. The Full Bench of the High Court consisting of Justice Surjit Singh Sandhawalia, Justice Prem Chand Jain and Justice Bhupinder Singh Dhillon extracted from the affidavits of the appellants to which reference has been made. The Full Bench thereafter referred to paragraph 9 of the affidavit where the deponents said that if in view of this Hon'ble Court the action of the dependent in addressing the letter in question constituted for any reason contempt of court, no one would be more sorry than the dependent himself. Therefore, the deponent tenders his apology to this Hon'ble Court for the same and prays for its acceptance.

After the recital of paragraph 9 the judgment of the Full Bench said as follows :

In view of the averments made in the affidavits filed in reply and in particular in paragraph 9 there of we accept the apology tendered on behalf of the respondents and discharge the rule issued against them.

9. In our view the judgment is utterly unsound and unsustainable. The elementary basis of acceptance of apology is that there is to be a finding of committal of contempt. The deponents stated that if the court is of the view that the letter of the deponents constitute for any reason contempt of court, the deponents tender apology. It is a conditional apology. The condition is that if there is contempt the despondents tender apology. In the absence of any finding by the High Court that the

appellants committed any contempt of court there was never any occasion for acceptance of apology.

10. It appears before us that the allegations in the letter were not disputed and challenged. The High Court proceeded on the basis that the letters written by the appellants were correct. It is indeed curious that the High Court in the notice referred to the letter of the appellant and said "on a perusal of the contents there of a prima facie case for contempt is made out". The High Court did not mention which particular portion of the letter constituted contempt of court.

11. It is necessary to state here that if any judge addresses on political problems or controversies the judge exposes himself to discussion by public. The reason is that the judge travels from his judicial work and descends into the arena of politics and parties. The judge cannot in such a case take shelter behind his office if the public discusses and criticises the views expressed by him. The reason is obvious. It is no part of the duty of a judge nor is a duty in discharge of office of a judge to go and address a meeting on political matters to redress grievances of the people.

12. However, if the speech of any judge is criticised and if it becomes a disputed question of fact as to whether any judge did speak or not as is alleged by the writer the matter would have to be ascertained by the court on facts whether the judge concerned did speak on the matters ascribed to him before the court would take any action against the persons who would criticise the judge's speech.

13. We wish to make it clear that if on facts it appears that the judge did say things on matters about politics such utterances or views or observations will be the personal opinions expressed by the judge, and, therefore, the protective umbrella of the court cannot be used by way of bringing the critics on the charge of contempt of court.

14. It also appears in the letter that there is an allegation that the judge accepted hospitality of some organisation. To say that will not by itself be a contempt. All we need say is that it will not be correct and proper for any judge to accept the invitation and hospitality of any business or commercial organisation or of any political party or of any club or organisation run on sectarian, communal or parochial lines. Invitations by the Bar Association or social invitations naturally stand on a different footing and no one will find an exception to any judge attending a social function.

15. Judges are by reason of their office and nature of work expected not to get involved in controversial matters, or to concern themselves with political issues or policies undertaken by political parties a part of their political programme.

16. We are of opinion that the Full Bench fell into the error of accepting the apology without finding that the appellants committed any contempt. In the absence of such a finding no question arises for acceptance of apology.

17. In view of the fact that the High Court proceeded on the basis that the allegations in the letter were unchallenged we are of opinion that the matters did not constitute any contempt. The High Court should have dropped the proceedings and not pursued the matter.

18. The judgment is set aside. The contempt proceedings are dropped. We should state here that the Advocate General of Haryana quite fairly stated that the letter did not constitute any contempt.

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