

Asharam M. Jain

Vs

A. T. Gupta and Others

Special Leave Petition (Civil) No. 6735 of 1983

(E. S. Vankataramiah, O. Chinnappa Reddy, A. N. Sen JJ)

25.08.1983

ORDER

CHINNAPPA REDDY, J. –

Asharam M. Jain sought special leave of this Court under Article 136 of the Constitution to appeal against the order of the High Court of Maharashtra in Notice of Motion No. 859 of 1982. The petition for special leave to appeal ran to 84 pages and at the foot of the petition, it was stated "drawn and filed by B. P. Maheshwari & Co., Advocates for the petitioner". Asharam M. Jain filed an affidavit along with the special leave petition affirming that the statement of facts in paragraphs 1 to 67 in the petition for special leave to appeal were true to his knowledge and belief and based on the record of the lower court. In several paragraphs of the special leave petition, Asharam M. Jain indulged in wild and vicious diatribe against the then Chief Justice of the High Court of Maharashtra. To illustrate the limits of the invective, we wish to refer to but one paragraph of the petition. In paragraph 26 of the petition, it was stated by Asharam M. Jain :

The petitioner says that having found that they would no longer be justified in continuing to hear the Notice of Motion and appeal for the several true facts set out in the Transfer Application and the affidavits made by the petitioner and briefly hereinabove set about, the learned Chief Justice tried by the said Order to harm the petitioner as much as he could and made totally false and wrong observations quite unworthy of the head of the judiciary of the State of Maharashtra, and His Lordship Mr. Justice Pendse supported the learned Chief Justice. The said Order, it is clear, has been made with the sole and dishonest object of causing prejudice in the minds of the Judges of the new Bench against the petitioner and depriving the Judges of the new Bench of their right to independently judicially decide the Notice of Motion on merits, and which is proved by subsequent events.

When the special leave petition was heard on April 27, 1983 by this Court, the outrageous allegations made against the Chief Justice and the other learned Judge of the High Court of Maharashtra were noticed and two of us (A. P. Sen and E. S. Venkataramiah, JJ.) made the following order :

The special leave petition is dismissed. Our attention is drawn to paragraphs 6, 10, 11, 13, 16, 19, 20, 26, 27, 28, 30, 31, 34, 38, 39, 42, 50, 57, 60, 62 and grounds 5(v), (x), 7 to 10, (Z), (mm), (tt), (uu) of the special leave petition. The learned Judges have also in the course of the order made reference to the conduct of the petitioner in casting aspersions on the former Chief Justice. Issue notice for contempt to the

petitioner why he should not be committed for contempt under the Contempt of Courts Act, 1971.

In answer to the notice issued to Asharam M. Jain, he appeared before the Court on July 25, 1983 when the following order was made :

Shri Garg, appears along with the contemner. He prays for two weeks' time to file an affidavit and states on instruction that his client is not prepared to withdraw the allegations but wants to make amends. He is allowed two weeks' time to file an affidavit.

Issue notice to the Attorney-General for India requesting him to appear and assist the Court in the case. The Registry shall furnish a copy of the special leave petition and the show cause notice to the learned Attorney-General.

The matter be listed on August 22, 1983. The contemner shall remain present in the Court on that date.

2. When the matter was taken up for hearing on August 22, 1982, Shri R. K. Garg placed before us an affidavit, said to contain the sincere and unconditional apology of Asharam M. Jain and stated that the contemner was placing himself at the mercy of the Court. He submitted that the Court should be so gracious as to accept the unqualified apology tendered by the contemner and refrain from sending the contemner to prison. He invited our attention to *In Re : Shri S. Mulgaokar* [(1978) 3 SCR 162 : (1978) 3 SCC 339 : 1978 SCC (Cri) 402 : AIR 1978 SC 727] where Krishna Iyer, J. suggested that "a normative guideline for the judges to observe in this jurisdiction was 'not to be hypersensitive where distortions and criticism overstep the limits, but of deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude'".

3. There is never any risk of judicial hypersensitivity. The very nature of the judicial function makes judges sympathetic and responsive. Their very training blesses them with 'insensitivity', as apposed to hypersensitivity. Judges are always seeking good reasons to explain wrong conduct. They know there are always two sides to a coin. They neither give nor take offence because they deal with persons and situations impersonally, though with understanding. Judges more than others realise the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But, as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected; judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected. We had occasion to point this out in *Advocate-General, State of Bihar v. M. P. Khair Industries Ltd.* [(1980) 2 SCR 1172 : (1980) 3 SCC 311 : 1980 SCC (Cri) 688 : AIR 1980 SC 946 : 1980 Cri LJ 684], where we said [SCC para 7, p. 315 : SCC (Cri) p. 692] :

But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court,

not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage" [Per Frankfurter, J. in *Offut v. U.S.*, 345 US 11 (1954)]. The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope" [Per Judge Curtis-Raleigh quoted in *Jennison v. Baker*, (1972) 1 All ER 997, 1006].

So we approach the question not from the point of view of the judge whose honour and dignity require to be vindicated, but from the point of view of the public who have entrusted to us the task of due administration of justice. Having given our utmost consideration, we have come to the conclusion that it is not open to us to accept the easy and ready solution suggested by Mr. R. K. Garg of accepting the apology and imposing a fine. We think that a contumacious disregard of all decencies, such as, that exhibited by the contemner in this case can only lead to a serious disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment on the contemner which must be to send him to jail to atone for his misconduct and thereafter to come out of prison a chastened but a better citizen. We accordingly sentence him to suffer simple imprisonment for a period of two months.

4. Before we part with the case, we must express our sense of shock at a sad revelation made by Shri R. K. Garg during the course of the hearing. When we expressed our surprise and disgust that the special leave petition should have been drawn and settled by advocates of this Court, he told us that special leave petitions are often filed over the names of counsel, who receive the papers from counsel outside Delhi and file them in the Registry of the Court as if drawn and settled by them, though they may have never even looked into the papers. This is hardly proper and surely discourteous to the Court. We hope this is not a common practice.

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