L. D. Jaikwal

Vs

State of U. P.

Criminal Appeal No. 611 of 1982

(A. P. Sen, M. P. Thakkar JJ)

17.05.1984

JUDGMENT

THAKKAR, J. -

1. We are sorry to say we cannot subscribe to the "slap-say sorry-and forget" school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.

2. An advocate whose client had been convicted by the learned Special Judge, Dehradun, was required to appear before the learned Judge to make his submission on the question of 'sentence' to be imposed on the accused upon his being found guilty of an offence under Section 5(2) of the Prevention of Corruption Act by the Court. The learned advocate appeared in a shirt-and-trouser-outfit in disregard of the rule requiring him to appear only in court attire when appearing in his professional capacity. The learned Judge asked him to appear in the prescribed formal attire for being heard in his professional capacity. The learned advocate apparently took umbrage and left the Court. Some other advocate appeared on behalf the caused who had been found guilty of a charge of corruption. The learned Judge imposed a sentence of 4 years' RI which may have been considered to be on the high side. The matter in that case could have been carried to the High Court by way of an appeal, both, on the question of conviction, as also, on the question of sentence. But so far as the Court of the Special Judge was concerned, as the judgment had been pronounced and nothing more remained to be done by that Court, the mater should have rested there. The appellant, a senior advocate of long standing (not an immature inexperienced junior), however made a written application to the learned Special Judge couched in scurrilous language making the imputation that the Judge was a "corrupt Judge" and adding that he was "contaminating the seat of justice". A threat was also held out that a compliant was being lodged to higher authorities that he was corrupt and did not deserve to be retained in service. The offending portion may better be quoted :

> I am making a complaint against you to the highest authorities in the country, that you are corrupt and do not deserve to be retained in service. The earlier people like you are bundled out the better for us all.

As for quantum of sentence, I will never bow down before you. You may award the maximum sentence. Anyway, you should feel ashamed of yourself that you are contaminating the seat of justice.

3. There is no known provision for making such an application after a matter is disposed of by a

Judge. Nor was any legal purpose to be served by making such an application. Why was it then made? Obviously to terrorize and harass the Judge for imposing a sentence which perhaps he considered to be on the high side. Whether or not it was really so was for the higher Court to decide. As pointed out earlier, law provides for seeking appropriate relief from the higher Court. It is however not permissible to adopt a course of intimidation in order to frighten the Judge. His malicious purpose in making the application is established by another tell-tale circumstance. A copy of this application, without any occasion or need for it, was forwarded to the following authorities as per the endorsement made at the foot of it :

1. Administrative Judge, Allahabad for favour of requisitioning case file S. T. No. 2 from Dehradun and scanning through the facts.

2. Chief Secretary, Uttar Pradesh Government, Lucknow.

3. Director, Vigilance Commission, U. P., Lucknow.

4. Prime Minister, Secretariat, Delhi.

5. State Counsel, Shri Pooran Singh, Court of Shri V. K. Agarwal, Dehradun.

6. Shri D. Vira, I. C. S., Chairman, Indian Police Commission, Delhi.

7. President, Bar Association, Dehradun.

8. The Hon'ble Chief Justice of Bharat.

4. The High Court of Allahabad initiated contempt proceedings, found the appellant guilty of having committed criminal contempt under Section 2(c) (1) of the Contempt of Courts Act, 1971, after affording his full opportunity of hearing, and imposed a sentence of S. I. for 1 week and a fine of Rs. 500 (in default to undergo a further term of S. I. for 1 week). Hence this appeal.

5. Before the High Court the appellant sought to justify his conduct on the ground of the treatment alleged to have been meted out to him by the learned Judge. No remorse was felt. No sorrow was expressed. No apology was offered. Only when the appellant approached this Court he expressed his sorrow before this Court saying that he had los this mental balance. Upon finding that this Court was reluctant to hear him even on the question of sentence, as he had not even tendered his apology to the learned Judge who was scandalized, he prayed for three weeks' time to give him an opportunity to do so. His request was granted. He appeared before the learned Judge and tendered a written apology wherein he stated that he was doing so "as directed by the Hon'ble Supreme Court". This circumstance in a way shows that it was a 'paper' apology wherein he stated that he was doing so "as directed by the Hon'bel Supreme Court". This circumstance in a way shows that it was a 'paper' apology and the expression of sorrow came from his pen, not from his heart. For, it is one thing to 'say' sorry - it is another to 'feel' sorry. It is in this context that we have been obliged to make the opening remarks at the commencement of this judgment.

6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a

'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by treats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.

7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by someone. That is why the Court is impelled to act (rather than merely sermonize), much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circum-spection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when someone else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult - in fact it is more difficult to resist the temptation to do so rather than to to adhere to the nail-studded path of duty. Institution to do so rather than to adhere to the nail-studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displease any of the advocates, appearing in the matter.

8. We firmly believe that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief. We are of the opinion that the High Court was therefore justified in imposing a substantive sentence. And the sentence imposed cannot be said to be excessive or out of proportion.

9. Appeal is accordingly dismissed.

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