

Amrit Nahata

Vs

Union of India and Others

Criminal Miscellaneous Petition Nos. 8009 and 8010 of 1977

(D.A. Desai, R.B. Misra, V.B. Eradi JJ)

08.05.1985

ORDER

D. A. DESAI, J. -

1. The Union of India has moved this Court seeking permission to withdraw Criminal Miscellaneous Petitions 8009 and 8010 of 1977 pending in this Court since 1977.
2. Criminal Miscellaneous Petition 8009 of 1977 was moved by the Solicitor-General of India requesting the Court to take action against the five persons whose names and addresses have been set out in the petition under Section 15 of the Contempt of Court Act, 1971 on the ground that they were individually and severally guilty of willful disobedience to the directions and order of this Court with regard to the preservation of the film 'Kissa Kursi Ka', negatives and the prints in proper condition until the disposal of Writ Petition 595 of 1977 and thereby they have interfered with the due course of judicial proceedings and their conduct was intended and calculated to interfere with and obstruct the administration of justice by causing the loss and disappearance of film 'Kissa Kursi Ka' with a view to disabling and preventing this Court from effectively dealing with the writ petition pending before it and judicially determining the issues arising therein.
3. Criminal Miscellaneous Petition 8010 of 1977 was also moved by the Solicitor-General of India inviting the Court to hold that prima facie five persons whose names and addresses have been set out in the petition appear to have committed offence under Section 120-B read with Section 199 and 193 of the Indian Penal Code and it was expedient in the interest of justice to file a criminal complaint against them. Broadly it was alleged that the averments made in the petition for taking action under the Contempt of Courts Act when properly viewed would show that the persons mentioned in the petition prima facie appear to have entered into a conspiracy to intentionally give false evidence in any stage of the judicial proceeding as also fabricated evidence for the aforesaid purpose and intentionally made false statement and declaration which may in law be receivable in evidence and thereby committed offences under Section 193 and 199 of the Indian Penal Code.
4. It may be mentioned that Shri Amrit Nahata had filed a writ petition to this Court praying for declaration that Section 3 and 6 of the Cinematograph Act, 1952 and Rules 23 and 25 of the Cinematograph (Censorship) Rules, 1958 were unconstitutional, invalid and for a writ of mandamus directing the respondents in the writ petition to certify his film 'Kissa Kursi Ka' for unrestricted public exhibition. During the pendency of the writ petition this Court had made an order on July 18, 1975 that the petitioner will deliver within one week from the date of the order, negative and prints, if any, of the film to the Government and the Government will preserve negatives and prints, if any, in proper condition until the disposal of the writ petition. During the course of the further

proceedings on October 29, 1975, this Court made another order directing that the film 'Kissa Kursi Ka' be screened on November 17, 1975 at 6 p.m. to be seen by five learned Judges of this Court. This order led to practically a game of hide and seek but ultimately the film was not made available for screening as directed by this Court.

5. In the mean time a substantive prosecution was launched against Shri Vidya Charan Shukla, the then Minister of Information and Broadcasting, Government of India and late Shri Sanjay Gandhi for various offences. The case came up for trial before the learned Sessions Judge who convicted both the accused for various offences and imposed several sentences on them. The matter was carried in appeal to the Delhi High Court. In the mean time on the enactment of Special Courts Act, 1979, a declaration under Section 5 (1) of the Special Courts Act was made with the result that the appeal stood transferred to this Court. The two appeals were heard by this Court and the judgment reported in *V. C. Shukla v. State (Delhi Administration)* ((1980) 3 SCR 500 : (1980) 2 SCC 665 : 1980 SCC (Cri) 561). This Court acquitted both the accused holding that the charge is not brought home to them.

6. It may be mentioned that pending the prosecution before the learned Sessions Judge, this Court postponed hearing of the petition for taking action for contempt as well as the petition for filing a criminal complaint against the persons shown in both the petitions. After the decisions in the aforementioned two appeals, the present petition was filed requesting the Court to permit the Union of India to withdraw both the petitions.

7. While considering the request for withdrawal of the proceedings initiated for taking action for contempt of the Court, the Court would generally be guided by the broad facts of the case and more particularly whether respect for judicial process would be enhanced or dwindled by either granting or refusing to grant the request. There is a marked difference between a complaint made by an individual for wrong done to him and a petition moved before this Court inviting the Court to take notice of the fact that its contempt has been committed. The contempt is of the Court and not of the individual. Therefore, Section 15 of the Contempt of Courts Act, 1971 confers powers on this court as well as on the High Court to take suo motu action or on a motion made by amongst others, the Solicitors-General. It is for the Court to determine whether the act complained of tending to scandalise the Court if viewed with certain severity with a view to punishing the person would in the larger interest of the society enhance respect for the judicial process, or too sensitive attitude in such matter may even become counter-productive. The power to commit for contempt of court has to be exercised with the greatest caution. Neither too sensitive attitude nor an easy escape from performing the harsh duty would help in maintaining respect and decorum for the judicial process which is essential for establishing a society based on rule of law. The Court is to steer clear between two extremes but it must be remembered that the petitioner who has moved for taking action in contempt is not entitled as a matter of right to withdraw the petition whenever it suits his purpose. Once the act, which prima facie shows notice of the court, it is the court which has to decide whether the contempt has been committed or not or whether it is appropriate to take action or a later date whether it is appropriate to take action or at a later date whether to drop the proceedings. The matter is primarily between the Court and the contemner. It is for this reason that while we are inclined to grant request for withdrawal of petitions we consider it proper why we consider it proper at this stage to permit withdrawal of the two petitions.

8. The first important aspect that has considerably influenced our thinking is that failure to obey the interim order of this Court to preserve the film and negatives and prints of the film "Kissa Kursee Ka" and to make the same available for exhibition as directed by this Court is referable to the writ

petition filed by Amrit Nahata who himself at a later date backed out and withdraw the petition. But that itself is a circumstance of innocuous character. Subsequently a full-fledged prosecution was launched inter alia alleging that the prints and negatives of film 'Kissa Kurse Ka' were deliberately destroyed with a view not to make them available for screening before the Court as directed by this Court. In this proceeding evidence was led on behalf of the prosecution and the case ended in a conviction. While allowing the appeal this Court acquitted the accused holding that it is not proved to the satisfaction of the Court that the prints by the alleged contemnors. This is the finding recorded by a Bench of this Court. It will have an impact on the petition for taking action for contempt on the allegation that the Court's order for preserving the prints and negatives of the film for screening was deliberately disobeyed. Undoubtedly, the interim order has to be respected and obeyed. The defence canvassed was that the negatives and prints of the film got mixed up with other boxes and could not be traced and that defence appears to have found favour with a Bench of this Court. This is the most important aspect which has a considerable bearing on the question whether two petitions should be proceeded with or not.

9. We must frankly say that the judgment of this Court in the criminal case by itself is not decisive of the matter. Independent of it. We would have been required to examine whether at the date the Court made the order, there was any attempt at deliberately flouting the Court's order but that would be an attempt at flogging of carcas, and it would be merely delving deep into an unsavoury past not very conducive to judicial and judicious approach. And one of the alleged contemnors has met a tragic end.

10. We are keen to emphasis the fact that the change in climate has no relevance and it must be said in fairness to Mr. L. N. Sinha, the learned Attorney-General of India who appeared at the hearing of these petitions that he even once did not refer to it.

11. Accordingly, having regard to all the aspects of the matters, we are of the opinion that the prayer for withdrawal of the two petitions should be granted. Both the petitions are disposed of as withdrawn.

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