

M. B. Sanghi, Advocate

Vs

High Court of Punjab and Haryana and Others

Criminal Appeal (Contempt) No. 144 of 1987

(A.M. Ahmadi, S.C. Agarwal JJ)

31.07.1991

JUDGMENT

AHMADI, J. –

1. I am in complete agreement with my learned brother Agrawal, J. that there is no merit in this appeal but I would like to add a few words of my own.
2. The appellant, a practising advocate, having failed to persuade the learned Subordinate Judge to grant an ad-interim injunction pending filing of a counter by the opposite party, switched gear from persuasive advocacy to derogatory remarks in the fond hope that such tactic would succeed and the learned Judge would be browbeaten into submission. Fortunately the learned Judge was made of sterner stuff and refused to succumb to such unprofessional conduct. Instead he made a record of the disrespectful and derogatory remarks made with intent to tarnish his image as a Judicial Officer and forwarded a report to the District Judge who in turn reported the matter to the High Court to enable it to initiate proceedings for contempt for court against the appellant. The exact words uttered by the appellant, reproduced in the judgment of my learned brother, leave no doubt that the intention of the appellant was to cast aspersions on the integrity of the learned Judge and to lower him in the esteem of others by creating doubts regarding his honesty, judicial impartiality and independence. The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared

concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence. And here is a members of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer - not that the High Court has been harsh with him - what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse - no regret - it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned judge was lying - adding insult to injury -, and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape. The High Court rightly did not accept it. That is what this Court had done in a similar situation in L. D. Jaikwal v. State of U.P. ((1984) 3 SCC 405 : 1984 SCC (Cri) 421). This Court described it is a 'paper' apology and refused to accept it in the following words : (SCC pp. 408-09, para 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 threats 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."

When a member of the bar is required to be punished for use of contemptuous language it is highly painful - it pleases none - but painful duties have to be performed to uphold the honour and dignity of the individual judge and his office and the prestige of the institution. Courts are generally slow in using their contempt jurisdiction against erring members of the profession in the hope that the concerned Bar Council will chasten its member for failure to maintain proper ethical norms. If timely action is taken by Bar Councils, the decline in the ethical values can be easily arrested.

3. By refusing to interfere with the impugned order of the High Court this Court is not merely punishing the appellant but is in fact upholding the independence of the judiciary. Let me conclude with the hope that this Court will not be called upon to deal with such a situation in future.

4. For the above reasons I agree that the appeal be dismissed.

AGRAWAL, J. –

This appeal filed under Section 19(1)(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') is directed against the judgment and order of the High Court of Punjab and Haryana

dated January 13, 1987 whereby the appellant has been convicted for having committed contempt of court under Section 2(c)(i) of the Act and has been sentenced to pay Rs. 1000 as fine and in case of default in payment of fine to undergo simple imprisonment for seven days.

6. The appellants, who is practising as an advocate at Narnaul, was representing the plaintiff in civil suit titled Hari Ram v. Municipal Committee. On September 20, 1985, the appellant appeared in the said suit for the plaintiff and orally prayed for ex-parte ad-interim stay. The said request was declined by the Subordinate Judge, Narnaul, who ordered for issuance of notice to the defendants for September 24, 1985. On September, 24 1985, Shri Banwari Lal Sharma appeared for the defendants and requested for a date for filing a reply to the said application which request was not opposed by the appellant but the appellant prayed for ad-interim stay in favour of the plaintiff. The Subordinate Judge told the appellant that the question of ad-interim stay would be considered after filing of the reply by the defendants and adjourned the case for September 26, 1985. It appears that the appellant was not satisfied with this order passed by the Subordinate Judge and according to the Subordinate Judge, Shri S.R. Sharma, the appellant uttered the following words in the court :

"You are wholly favouring the Municipal Committee. Are you sitting as Judge or as Administrator of Municipal Committee ? To me it seems that you are deciding the case as Administrator of Municipal Committee. You are acting as if you are a contractor of the Municipal Committee. I do not expect any justice from you. I do not think that you will grant stay to me as you are fully siding with the Municipal Committee. You are not granting stay to me as you are in collusion with the Deputy Commissioner and under his (Deputy Commissioner's) influence, you do not want to grant stay to me and that he will complain against me to the Hon'ble High Court."

7. On September 25, 1985, the Subordinate Judge submitted a report Ex. P.A. to the District and Sessions Judge, Narnaul for taking necessary action against the appellant wherein the aforementioned words alleged to have been uttered by the appellant were set out. The District and Sessions Judge, Narnaul submitted a report dated October 12, 1985, to the High Court and on the basis of the said report, proceedings for contempt were initiated against the appellant by the High Court. The appellant submitted a reply by way of affidavit wherein he denied to have uttered the words mentioned in the report of Shri S. R. Sharma, Subordinate Judge, Narnaul to the District and Sessions Judge, Narnaul and also offered an unqualified apology. Shri S. R. Sharma filed his affidavit in the High Court and he was also examined as a witness. In addition, the High Court examined Shri Krishan Kumar Sharma, who was at the relevant time reader in the court of Shri S.R. Sharma, and three advocates, namely, Shri Banwari Lal Sharma, Shri Gyan Chand Sharma and Shri Satya Narain Sharma. The appellant did not examine himself as a witness before the High Court.

8. The High Court found that the appellant had attacked the integrity of the learned Sub-Judge by saying that he was a contractor of the Municipal Committee, that he was in collusion with the Deputy Commissioner and he was under his influence and that the attack made on the learned Sub-Judge disparaging in character and derogatory to his dignity would vitally shake the confidence of the public in him and that the aspersions made against the Sub-Judge were much more than merely insult and, in fact, they scandalise the court in such a way as to create distrust in the people's mind and impair confidence of the people of court. The High Court was, therefore, of the view that the appellant had brought himself clearly within the ambit of contempt of court and he was accordingly found guilty under Section 2(c)(i) of the Act. As regards the apology tendered by the appellant, the High Court observed that this was not the first occasion and earlier also the proceedings for contempt had been initiated against him in pursuance of a report made by Shri K. K. Chopra, the

them Chief Judicial Magistrate, Narnaul in C.O.C.P. No. 12 of 1983 wherein also the appellant had tendered an unqualified apology in the High Court and the rule against him was discharged and that the appellant is addicted to using contemptuous language and making scurrilous attacks on the judges. The High Court held that apology must, in order to dilute the gravity of the offence, be voluntary, unconditional and indicative of remorse and contrition and it should be tendered at the earliest opportunity and further, that the aspersions mentioned in the letter Ex. P.A. at 'A' to 'A' sent by Shri S. R. Sharma to the District and Sessions Judge, Narnaul were made by the appellant with a design and were not simply thoughtless and in such a case, the appellant cannot be allowed to get away by simply feeling sorry by way of apology as the easiest way. The High Court did not, therefore, accept the apology by the appellant.

9. Shri Mahabir Singh, the learned counsel appearing for the appellant, has submitted that the High Court was in error in holding that the appellant had uttered the words mentioned in the letter Ex. P.A. sent by Shri S. R. Sharma to the District and Sessions Judge, Narnaul. Shri Mahabir Singh has invited our attention to the statements of the witnesses who were examined before the High Court and has laid particular emphasis on the statement of Shri Banwari Lal Sharma, advocate, who was representing the defendant Municipal Committee in the civil suit before the Subordinate Judge and was present in the court at the relevant time and who has stated that the appellant has not used any unparliamentary or foul language towards Shri S.R. Sharma, Sub-Judge. Shri Mahabir Singh has also referred to the statements of Shri Gyan Chand Sharma, advocate and Shri Satya Narain Sharma, advocate who have stated that they were present in the court of Sub-Judge, Narnaul on September 24, 1985 at about 2 or 2.15 p.m. when the appellant had requested the Subordinate Judge to grant ad-interim stay against the Municipal Committee for demolition of a chabutra in the case of Hari Ram v. Municipal Committee and the said request of the appellant was declined by Shri S. R. Sharma and that the appellant did not use any discourteous or impolite language against Shri S. R. Sharma.

10. We have carefully perused the statements of the three advocates mentioned above on which reliance has been placed by Shri Mahabir Singh. Their evidence has to be considered along with the statements of the Sub-Judge, Shri S. R. Sharma, Narnaul and Shri Krishan Kumar Sharma, who was posted as reader in the court of Shri S.R. Sharma at that time. Shri S.R. Sharma, during the course of examination-in-chief has stated that when he did not pass orders for interim injunction in favour of the appellant, he started speaking loudly and used defamatory language. He has also repeated the language which was used by the appellant which in substance was in the same terms as mentioned in his letter Ex. P.A. addressed to the District and Sessions Judge, Narnaul. Shri Krishan Kumar Sharma in his deposition has stated :

"... Shri M. B. Sanghi repeatedly tried to compel Shri Sita Ram Sharma to issue the ad-interim injunction in favour of his client, but Shri Sita Ram Sharma had declined that request without hearing the arguments. Shri M. B. Sanghi then stated that he had no hope of justice from Shri Sita Ram Sharma as the latter was behaving like an Administrator of the Municipal Committee. Shri M.B. Sanghi, addressed Shri Sita Ram Sharma saying that he (Shri Sita Ram Sharma) was under the pressure of Deputy Commissioner, Narnaul."

11. Nothing has been brought out during the course of examination-in-chief of these witnesses which may show that they were deposing falsely against the appellant. The High Court has placed reliance on the testimony of these witnesses in preference to the testimony of three advocates, namely, Shri Banwari Lal Sharma, Shri Gyan Chand Sharma and Shri Satya Narain Sharma. After

considering the evidence of all the witnesses, I am inclined to agree with the appreciation of the evidence by the High Court. I find no reason to discard the testimony of Shri S.R. Sharma who has been corroborated by his reader, Shri Krishan Kumar Sharma. Considering the language used by the appellant in the court of Shri S.R. Sharma, as mentioned by him in his report Ex. P.A. to the District and Sessions Judge, Narnaul and repeated by him in his statement before the High Court it must be held that the appellant had made an attack on the learned Subordinate Judge which was disparaging in character and derogatory to his dignity and would vitally shake the confidence of the public in him and that the aspersions made by the appellant had the effect of scandalising the court in such a way as to create distrust in the people's mind and impair confidence of the people in court. The appellant has, therefore, been rightly held guilty of having committed the contempt of court under Section 2(c)(i) of the Act.

12. Shri Mahabir Singh has urged that the appellant is a fairly senior advocate and has been practising for more than 20 years and since he had tendered unqualified apology before the High Court the same ought to have been accepted. With regard to apology in proceedings for contempt of court, it is well settled that an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. (See *M. Y. Shareef v. Hon'ble Judges of the High Court of Nagpur* ((1955) 1 SCR 757 : AIR 1955 SC 19 : 1955 Cri LJ 133)). In the instant case, I find that in his affidavit in reply to the notice issued by the High Court which is annexed at Annexure II, the appellant first denied having used the words as mentioned by Shri S. R. Sharma in his report sent to the District and Sessions Judge, Narnaul or having shown disrespect in any manner whatsoever to Shri S.R. Sharma, the presiding officer of the court of Sub-Judge, Narnaul of September 24, 1985. In para 3 of the said affidavit, the appellant has stated as under :

"That if this Hon'ble Court comes to the conclusion that the deponent has committed contempt, the deponent tenders an unqualified apology to this Hon'ble Court and begs for forgiveness. The deponent is a senior and respected member of the Narnaul Bar besides that being-law-abiding citizen has greatest respect and regards for the judiciary and all the Presiding Officers."

13. This would show that the apology that was tendered by the appellant before the High Court was to be taken into consideration in the event of the High Court finding the appellant guilty of having committed contempt of court. Moreover in the present case, it has been found that this was not the first occasion in which proceedings for contempt of court had been initiated against the appellant and on an earlier occasion also proceedings for contempt of court had been initiated against the appellant in pursuance of a report of Shri K. K. Chopra, the then Chief Judicial Magistrate, Narnaul and in those proceedings the rule issued against the appellant was discharged on his tendering unqualified apology before the High Court. In those proceedings also the appellant is said to have made disparaging remarks against the judge. Keeping in view the said circumstance, the High Court has found that the appellant was addicted to using contemptuous language and making scurrilous attacks on judges. Having regard to the fact that incidents of insubordination and use of improper language towards the judges are on the increase, the High Court was of the view that the appellant could not be allowed to get away by simply feeling sorry by way of apology as the easiest way. I am unable to say that the High Court was not justified in taking this view. Taking into consideration the facts and circumstances of the case and the fact that the appellant, a fairly senior advocate, is prone to use disparaging and contemptuous remarks against judges, I am of the opinion that this is not a case in which the apology by the appellant may be accepted.

14. I, therefore, find no merit in the appeal and the same is accordingly dismissed.

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