SUPREME COURT OF INDIA

J. R. PARASHAR, ADVOCATE & ORS.

Vs.

PRASANT BHUSHAN, ADVOCATE & ORS.

28/08/2001

(G.B. Pattanaik & Ruma Pal)

Contempt Petition (crl.) 2 of 2001

JUDGMENT

RUMA PAL, J

The allegations in this contempt application relate to an incident which is alleged to have taken place on 30th December, 2000. According to the petition, on that day, the respondents led a huge crowd and held a dharna in front of this Court and shouted abusive slogans against this Court including slogans ascribing lack of integrity and dishonesty to the Institution. This was done in the presence of the media. The petition alleges that the petitioners protested but were attacked and assaulted by the respondents who called them brokers of this Court. The petition goes on to state that that evening at 6.00 P.M while the petitioners were watching the police officials trying to disperse the crowd, the respondents again attacked, abused and assaulted the petitioners. On the next day at 1.00 P.M. the petitioners lodged a complaint with the Tilak Marg, Police Station. A copy of the complaint has been annexed to the petition. According to the petition the dharna, slogan shouting and assault on the petitioners were designed to compel the Court to decide a pending application filed by the respondents before this Court in the respondents favour.

Given the allegations in the petition that the respondents had incited a crowd by shouting slogans attacking the integrity of the Judges of this Court, notices were issued to the respondents of the application, so that they could give their version of the incident, if it had taken place at all.

Each of the three respondents have filed separate affidavits in response to the notice. All three respondents have admitted that there was a dharna outside the gates of this Court on 30th December, 2000. The dharna had been organized by the Narmada Bachao Andolan and the gathered crowd were persons who lived in the Narmada Valley and were aggrieved by the majority judgment of this Court relating to the building of the dam on the Narmada River.

As far as respondent No. 1 is concerned, he has asserted that while he supported the cause and had espoused it by appearing as counsel before this Court, he did not approve of the holding of a dharna as a way of protesting against the judgment of this Court. He has denied that he took part in the dharna although, he says, he did nothing to stop it. He has also denied that he shouted any slogan against the Court nor did he assault, abuse or threaten any of the petitioners.

As far as respondent No. 2 is concerned, she has denied that any incident involving the petitioners, as alleged in the petition, had taken place and asserted that the allegations that the petitioners were

threatened or abused or assaulted were false and fabricated. She has admitted participation in the dharna and also to have made speeches and raised slogans but has said that to her knowledge, no slogan was raised or speech made impugning the integrity of the Judges of this Court. She has sought to justify the holding of the dharna as a legitimate form of protest against the judgment which had been delivered by this Court in connection with the building of the dam on the Narmada river. Apart from giving the background of the Narmada Bachao Andolan and the merits of the case of the oustees whose case she represents, the respondent No. 2 has said in her affidavit:

The Superior Courts have recently shown a disturbing tendency to use the power of contempt against persons who have been criticizing the Courts and their judgments. A judiciary which insulates itself from criticism by using the power of Contempt, is bound to insensitive to the people that it is meant to serve. This does not bode well for the future of our republic .I will continue to help them raise their voices in protest against this system even if I have to do so against the Judiciary and the Courts. I will continue to do so as long as I can, even if I have to be punished for contempt for doing that.

The respondent No. 3 also filed an affidavit in response to the notice. The respondent No. 3 has denied that she had raised any slogan against the Court. According to the respondent No.3, she had left the dharna at about 6.00 p.m. and that no such incident, as alleged in the petition or the FIR had taken place. She has asserted her right to participate in any peaceful protest that she chose to. She has clarified that she has never, either in writing or in any public forum, cast aspersions on the Court or the integrity of the Judges. However, according to the respondent No. 3, she has faced legal harassment for her writing, the latest incident being the present proceedings. She has stressed the need for Courts not to be intolerant of criticism or expressions of dissent as this would mark the beginning of the end of democracy.

This was followed by three paragraphs which are quoted verbatim:

On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places.

Yet, when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people, who have publicly though in markedly different ways questioned the polices of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.

It indicates a disquieting inclination on the part of the Court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.

On the returnable date, the respondents appeared in person. Their further presence was dispensed with. By an order dated 23rd April 2001, the Additional Solicitor General was appointed Amicus Curiae and requested to assist the Court.

At the hearing, the learned Additional Solicitor General submitted that the paragraphs in the affidavits of the respondents 2 and 3 quoted earlier appeared to be contumacious. The petitioners, who appeared in person, addressed the Court in a manner which not only ill became their standing

as Advocates of this Court but also belied their claims to be champions of this Courts dignity.

The respondent No. 1 submitted that the allegations made in the petition should not be accepted as the police who were present all along had refused to register an FIR based on the complaint of the petitioners. Learned counsel for the respondent No. 2 contended that the petition was grossly defective and should not have been accepted by the Registry of this Court at all. Apart from that, it was contended that what was stated by the respondent No. 2 in her affidavit was a criticism of the Courts judgment and not contumacious. The respondent No. 3, appearing in person, stated that she had nothing to add to her affidavit and if that amounted to contempt then she was prepared to face the consequences.

Before considering the merits of the case, it is necessary to highlight principles relating to the law of contempt which though well settled bear repetition.

A civil society is founded on a respect for the law. If every citizen chose to break the law, we would have no society at all, at least not a civil one. It is this respect for the law and of the law enforcing agencies that, somewhat paradoxically, ensures the freedoms recognised in the Constitution. The respect is at best a fragile foundation. While it is to be built and sustained by the conduct of the persons administering the law, it has to be shored up by sanctions for actual breaches of the law and for actions destroying that respect. The law of contempt is framed for the second purpose.

That is why although under Article 19(1)(a) of the Constitution, all citizens are guaranteed the right to freedom of speech and expression, sub-Article (2) provides:

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause .. in relation to contempt of court..

Apart from the power conferred by the Constitution on the Supreme Court and each High Court to punish contempts of itself, the Contempt of Courts Act, 1971 (referred to as the Act) has empowered the Courts to punish actions which fall within the definition of civil and criminal contempt in that Act. If what is alleged in the petition were true then it would be a case of criminal contempt and Criminal Contempt has been defined in the Act as meaning publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

This does not mean that a judgment is not open to fair criticism. Section 5 of the Act says that a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

The operative word is fair. In other words, in the guise of criticizing a judgment, personal criticism of the Judge is impermissible. The law as it stands today is what was said by the Privy Council in 1936 :

..no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrongheaded are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

To ascribe motives to a Judge is to sow the seed of distrust in the minds of the public about the administration of justice as a whole and nothing is more pernicious in its consequences than to prejudice the mind of the public against judges of the Court who are responsible for implementing the law . Judges do not defend their decisions in public and if citizens disrespect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the Judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticised by anyone who thinks that it is erroneous All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication .

This, in brief, is the substantive law which is relevant for the purposes of the case before us.

As far as the procedure is concerned at this stage we note only those principles which are relevant for a decision on the issues involved in this case and start with the initiation of proceedings. Sections 14 and 15 of the 1971 Act both deal with the procedure for taking cognizance in cases of criminal contempt. In cases where the contempt is in the face of the Supreme Court or High Court, the Court acts suo motu. In cases of criminal contempt other than a contempt referred to in Section 14, the Supreme Court or the High Court may under Section 15(1) take action on its own motion or on a motion made by (a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General,

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

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Explanation. In this section,the expressionAdvocate-Generalmeans,- - (a) In relation to the Supreme Court, the Attorney General or the Solicitor- General:

The underlying rationale of clauses (a), (b) and (c) appears to be that when the Court is not itself directly aware of the contumacious conduct, and the actions are alleged to have taken place outside its presence, it is necessary to have the allegations screened by the prescribed authorities so that the Court is not troubled with frivolous matters. The Sanyal Committee which had been set up in 1961 to consider and suggest reforms to the existing law of contempt and whose recommendations formed the basis for the present Act, explained the need for this screening:

In the case of criminal contempt, not being contempt committed in the face of the Court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a

course of action would give considerable assurance to the individual charged and the public at large.

The actual proceedings for contempt are quasi-criminal and summary in nature. Two consequences follow from this. First, the acts for which proceedings are intended to be launched must be intimated to the person against whom action is proposed to be taken with sufficient particularity so that the persons charged with having committed the offence can effectively defend themselves. It is for this reason Section 15 requires that every motion or reference made under this section must specify the contempt of which the person charged is alleged to be guilty. The second consequence which follows from the quasi-criminal nature of the proceeding is that if there is reasonable doubt on the existence of a state of facts that doubt must be resolved in favour of the person or persons proceeded against. In addition this Court has framed Rules under, inter-alia, Section 23 of the Act providing in detail for the procedure to be followed by the Court and its Registry on the one hand and the complainant/respondent on the other. This brings us to the present proceedings. Learned counsel for the respondent No.2 was correct when he submitted that the petition was shabbily drafted and procedurally grossly defective. In fact almost every one of the Rules framed by this Court have been violated. Rule 4 (a) directs that every petition under rule 3(b) or (c) shall contain

(i) the name, description and place of residence of the petitioner or petitioners and of the persons charged;

It is, therefore, mandatory that the places of residence of both the petitioners and the respondents are given. Yet each of the five persons named as petitioners has given the Bar Library or the Lawyers Chamber as his address. The non-compliance with Rule 4(a) is more shocking when it comes to the Respondents. The respondent No.1s address has been given as his chamber. The respondent No.2 has been described as Leader Narmda (sic) Bachao Andolan and the Respondent No.3 as the Booker Prize Winner. Both, their addresses have been given as C/o the respondent No.1 at his legal chambers in the premises of this Court.

A more serious flaw is the verification of the petition. Rule 4(b) requires that The petition shall be supported by an affidavit. There are five named petitioners yet except for the respondent No.1 no one else has either signed the petition or affirmed it.

Again under Rule 3 like Section 15 of the Act, the Court may take action in cases of criminal contempt either a) suo motu ; or

b) on a petition made by Attorney-General, or Solicitor General; or

c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney- General or the Solicitor-General.

Rule 5 provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice. It is clear from Rule 5 that the matter could have been listed before this Court by the Registry as a petition for admission only if the Attorney General or Solicitor General had granted his consent. In this case, the Attorney General had specifically declined to deal with the matter and it does not appear that any request was made to the Solicitor General to give his consent.

Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to

take cognizance of their complaint. In any event the power to act suo motu in matters which otherwise require the Attorney General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise sub-section (1) of Section 15 might be rendered otiose .

When a matter is listed before the Court, the Court assumes that the formalities in connection with the filing have been scrutinized by the Registry of this Court that the proper procedure has been followed as it is the duty of the Registry to scrutinise the petition to see whether it is in order before placing it before the Court for consideration. There is no occasion for this Court to assume the task of the Registry before considering the merits of each matter. Had our attention been drawn to the procedural defects, we would have had no hesitation in rejecting the application in limine on this ground alone.

As to the merits, we may clarify here that our enquiry is limited to the alleged contempt of this Court by the respondents. We are not concerned with any scuffle that may or may not have taken place during the dharna. That is a matter entirely personal to the petitioners and does not call for an enquiry in this jurisdiction. But we are concerned with the holding of the dharna and the allegation that slogans had been shouted which denigrated the judiciary.

Holding a dharna by itself may not amount to contempt. But if by holding a dharna access to the courts is hindered and the officers of court and members of the public are not allowed free ingress and egress, or the proceedings in Court are otherwise disrupted, disturbed or hampered, the dharna may amount to contempt because the administration of justice would be obstructed. There is no allegation in the petition that the participants in the dharna had picketed the gates of this Court and prevented lawyers or litigants from entering and leaving the Court premises. Nor is it the petitioners case that the dharna disturbed or prevented the Courts from functioning.

While holding that a dharna held to protest a decision of a court may not per se amount to contempt, we must not be understood as approving the holding of a dharna before the Court. On the other hand it is deprecated and must be discouraged otherwise every disgruntled litigant could adopt this method of ventilating his grievance. It is, in any case, an inappropriate form of protest since the object of holding a dharna is either to raise public opinion or to exhibit the extent of public opinion against a decision of a court. Neither of these objects weigh with courts when deciding a case. Judges are required to decide what they think is right according to the law applicable and on the material placed before them and not be swayed by public opinion on any particular issue.

The allegations of shouting of abusive slogans cannot be accepted merely on the basis of the statements in this petition. The procedural flaws in the petition, as noted earlier are not mere technicalities. They are as vital to the acceptability of the petition and its contents. Where there is no other legally admissible evidence before the Court and the only material which the Court can take into account are the statements contained in the petition, the petition assumes a particular importance. Apart from the defective nature of the petition, the unexplained reluctance on the part of the four petitioners to affirm an affidavit verifying the facts contained in the petition, the failure to even attempt to obtain the consent of the Solicitor General and most importantly the refusal of the police station to record an FIR on the basis of the complaint lodged by the petitioner No. 1 are telling circumstances against the case in the petition. Admittedly, the police personnel were present at the time of the incident. Their refusal to record the FIR on the petitioners complaint is, therefore,

significant. We have also noted that there is no allegation in the complaint that the respondents 1 and 2 had shouted defamatory statements against the Court. On the other hand, we have the three affidavits filed by the respondents where the respondent Nos. 1 and 3 have categorically denied on oath that they shouted any slogans and the respondent No. 2 has denied shouting any slogan which could be termed as contumacious. There is no reason why their statements should be rejected. In the circumstances, we are not prepared to direct any further enquiry into the matter by requiring parties to lead evidence, particularly when the statements in the complaint filed by the petitioners are materially discrepant with the allegations in the petition.

This should have concluded the matter in favour of the respondents - had it not been for the statements made in the affidavits of respondents Nos. 2 and 3 which we have quoted earlier. There can be no doubt that the filing of an affidavit is publication within the definition of criminal contempt. An affidavit is not a secret document. It forms part of the Court records and is available to and accessible by the public. The question is whether the statements made in the affidavits of the respondent Nos. 2 and 3 could be termed to be fair criticism or do the comments impute improper motives to those taking part in the administration of justice?

Respondent No. 2 has spoken generally of the superior Courts using the power of contempt against persons who have been criticising the Courts and their judgments. According to the respondent No. 2s counsel, this reaction was in response to a statement in the petition which appeared to the respondent No. 2 to be one of the bases for issuing the notice against her.

It is true that the notice did not specify the contumacious acts with which the respondent was charged in terms of Rule 6 read with Form I. Only a copy of the petition had been served on the respondents along with the notice. It would not be unreasonable for the respondent No.2 to assume that every statement contained in the petition formed part of the charge. In the petition, it has been stated that the Honble Judges of the Supreme Court are pious constitutional authority and are not open for public and press to criticize, comment, shout defamatory and derogatory slogans against its verdict. Apart from the shouting of defamatory slogans, the rest of the sentence does not in fact correctly state the law. As we have said earlier, Courts like any other institution do not enjoy immunity from criticism as long as the criticism is fair, reasonable and temperate and does not accuse Judges of discharging their duties for improper motives or on extraneous considerations .

No personal motive has been ascribed by the respondent No. 2 to any particular Judge. Her comments are general in nature and may be construed as the expression of a perceived error in the decisions of superior Courts in their contempt jurisdiction. Therefore, according to the standards of fair criticism noted earlier and giving the respondent No. 2 the benefit of the doubt, we do not intend to take any further action against respondent No. 2 for her comments regarding the superior Courts in her affidavit.

However, the respondent No. 3 appears to us, prima-facie, to have committed contempt. She has imputed motives to specific Courts for entertaining litigation or passing orders against her. She has accused Courts of harassing her (of which the present proceeding has been cited as an instance) as if the judiciary were carrying out a personal vendetta against her. She has brought in matters which were not only not pertinent to the issues to be decided but has drawn uninformed comparisons to make statements about this Court which do not appear to be protected by the law relating to fair criticism. We are conscious that the respondent No. 3 has said before us that she stood by the comments made even if they were held to be contumacious. At the same time, we are also aware that when the statement was made, the respondent had not been called on formally to defend herself

against this charge. The prescribed procedure will have to be followed.

For the aforementioned reasons, while dismissing the proceedings initiated on the basis of the petition against all three respondents, we direct that notice in the prescribed form be issued to the respondent No.3 as to why the respondent No. 3 should not be proceeded against for contempt for the statements in the three paragraphs of her affidavit set out earlier in this judgment.

.J. (G.B. Pattanaik)

J. (Ruma Pal)

August 28, 2001

Andre Paul TerenceAmbard V. The Attorney General of Trinidad and Tobago AIR 1936 PC 141. See also Aswini Kumar Ghose V. Arabinda Bose AIR 1953 SC 75; Rama Dayal Markarha V. State of Madhya Pradesh AIR 1978 SC 921: 1978(3) SCR 497; Re: V. Ajay Kumar Pandey, Advocate JT 1998 (6) SC 571; Rustom Cawasjee Cooper V. Union of India AIR 1970 SC 1318; Perspective Publications (O) Ltd. V. The State of Maharashtra AIR 1971 SC 221; Re: Sanjiv Datta 1995 (3) SCC 619 Rama Dayal Markarha V. State of Madhya Pradesh (ibid) p.928 Regina V. The commissioner of Police of the Metropolis 1967 (2) WLR 1204, 1207 See S.K. Sarkar v. Vinay Chandra Misra 1981 (1) SCC 436 See P.N. Duda V. P. Shiv Shankar 1988 (3) SCC 167 S.K. Sarkar V. V.C. Misra (supra)

See Rustom Cawasjee Cooper V. Union of India AIR 1970 SC 1318; Perspective Publications (P) Ltd. The State of Maharashtra AIR 1971 SC 221; and Rama Dayal Markarha V. State of Madhya Pradesh AIR 1978 SC 921 5