

SUPREME COURT OF INDIA

C. Elumalai

Vs.

A.G.L. Irudayaraj

Contempt Petition No.118 of 2007

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

20.03.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Alleging violation of the order passed by this Court, the present contempt petition has been filed. Stand of the petitioners is that by order dated 19.3.2007 in SLP(C) No. 19924 of 2006, this court had directed that the High Court which was considering CS No. 597 of 2006 in the original side shall make an effort to dispose of the suit within a period of six months from the date of receipt of the order. It was also directed that till completion of the suit the parties shall not create any third party right. It is the case of the petitioners that in clear violation of this court's order, third party rights have been created. Several affidavits have been filed by the respondent No.1-alleged contemnor No.1. But no response has been filed by the respondent No.2- alleged contemnor No.2.

2. Learned counsel for the petitioners submitted that there has been conscious violation of the orders passed by this court. The unconditional apologies offered at various stages are intended to cover up the violation. Even after filing of the first affidavit containing alleged unconditional apology, the subsequent conduct shows continued violation.

3. Learned counsel for the respondent No.1-contemnor No.1 submitted that the factual scenario clearly shows that there was never any intention to flout the orders of this court. Rather, the respondent No.1-contemnor No.1 is a victim of circumstances and therefore the unconditional apology offered should be accepted.

4. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

5. Apology is not a weapon of defence to purge the guilty of their offence nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. As was noted in *L.D. Jaikwal v. State of U.P.*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 taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and nor from the pen. For it is one thing to "say" sorry - it is another to "feel" sorry.”

6. The above position was highlighted in *T.V. Godavarman Thirumalpad v. Ashok Khot and Another*²

7. The next question is whether for disobedience of the order passed by this Court, the respondents/contemnors are liable to punishment? In this connection, we may refer to some of the legal provisions. Article 129 of the Constitution declares this Court (Supreme Court) to be "a Court of Record having all the powers of such a Court including the power to punish for the contempt of itself". Clause (c) of Section 94 of the *Code of Civil Procedure, 1908* enacts that in order to prevent the ends of justice from being defeated, the Court may, commit the person guilty of disobedience of an order of interim injunction to civil prison and direct his property be attached and sold. Rule 2A of Order XXXIX as inserted by the *Code of Civil Procedure (Amendment) Act, 1976* (Act 104 of 1976) reads thus:

“2A. Consequence of disobedience or breach of injunction-- (1) In the case of disobedience of any injunction granted or other order made under Page 3178 rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release. (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

8. In *Ashok Paper Kamgar Union v. Dharam Godha and Ors.*³, this Court had an occasion to consider the concept of 'wilful disobedience' of an order of the Court. It was stated that 'wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signifies the act done with evil intent or with a bad motive for the purpose. It was observed that the act or omission has to be judged having regard to the facts and circumstances of each case.

9. In *Kapildeo Prasad Sah and Ors. v. State of Bihar and Ors.*⁴ it was held that for holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgment or order of the Court. But it was indicated that even negligence and carelessness may amount to contempt. It was further observed that issuance of notice for contempt of Court and power to punish are having far reaching consequences, and as such, they should be resorted to only when a clear case of wilful disobedience of the court's order is made out. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order and if such allegation is proved, contempt can be said to have been made out, not otherwise. The Court noted that power to punish for contempt is intended to maintain effective legal system. It is exercised to prevent perversion of the course of justice.

10. In the celebrated decision of *Attorney General v. Times Newspaper Ltd.*⁵ Lord Diplock stated:

“There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.”

11. In *Anil Ratan Sarkar and Ors. v. Hiral Ghosh and Ors.*⁶, this Court held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court.

“There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence. It was observed that power to punish a person for contempt is undoubtedly a powerful weapon in the hands of Judiciary but that by itself operates as a string of caution and cannot be used unless the Court is satisfied beyond doubt that the person has deliberately and intentionally violated the order of the Court. The power under the Act must be exercised with utmost care and caution and sparingly in the larger interest of the society and for proper administration of justice delivery system. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.”

12. In *All Bengal Excise Licensees Association v. Raghendra Singh and Ors.*⁷, this Court considered several cases and observed that wilful and deliberate act of violation of interim order passed by a competent Court would amount to contempt of Court.

13. From the above decisions, it is clear that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity

of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view, it should not hesitate in wielding the potent weapon of contempt.

14. The above position was highlighted in *Patel Rajnikant Dhulabhai & Anr. V. Patel Chandrakant Dhulabhai & Ors.*⁸.

15. On consideration of various aspects, we are satisfied that there has been a wilful and deliberate violation of this Court's order. We, therefore, in exercise of the court's jurisdiction under Article 129 of the Constitution of India impose exemplary cost of Rs.2,00,000/- on each of the contemnors to be deposited to the registry of the High Court within a period of eight weeks. On deposit being made, the amount shall be transferred to the National Legal Services Authority. In case of non payment, the contemnors shall undergo simple imprisonment for three months each. Any third party right created after order dated 19.3.2007 in SLP No. 19924 of 2006 is of no consequence and stands set aside.

¹[1984 (3) SCC 405]

²[2006(5) SCC 1]

³(2003) 11 SCC 1

⁴[1999 (7) SCC 569]

⁵1974 AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298

⁶(2002 (4) SCC 21)

⁷(2007) 11 SCC 374

⁸[2008(10) SCALE 349]