

SUPREME COURT OF INDIA

Leila David

Vs.

State of Maharashtra

(Altamas Kabir, G.S. Singhvi and H.L. Dattu JJ.)

21.10.2009

ORDER

ALTAMAS KABIR,J.

1. Writ Petition (Crl.) D. No.22040 of 2008 (since renumbered as Writ Petition (Crl.) No.91 of 2008) was filed by one Leila David in this Court on 4th August, 2008, under Article 32 of the Constitution of India, inter alia, for the following reliefs :

1. Writ of Mandamus directing the Maharashtra Govt. to ensure that the Petitioner is able to reside in her home without any illegal interference, threats, harassment or visits from the police.

2. Writ of Mandamus directing Director of CBI/ Ministry of Home Affairs- organize Interpol protection to Ms. Lydia Desai, Mrs. Priscilla D'souza and Ms. Rebecca Desai in Australia.

3. Writ of Mandamus directing army protection to BOSS School members and their families in India, since all levels of police, politicians and judges are involved in this Genocide and the situation is set to escalate.

4. Writ of Mandamus directing criminal proceedings and strongest punishment to following judges of Bombay High Court, for being party to the Genocide:

a. R.M.S. Khandeparkar

b. P.V. Kakade

- c. Ranjana Desai
- d. D.B. Bhosale
- e. B.H. Marlapalle
- f. Roshan Dalvi
- g. D.G. Deshpande
- h. V.K. Tahilramani
- i. Swatanter Kumar
- j. J.P. Devadhar
- k. JN Patel
- l. Nishita Mhatre

5. Writ of Mandamus directing immediate arrest and strongest punishment to the anti- BOSS petitioners who have filed bogus cases, initiate a nationwide witch-hunt and destroyed a pioneering organization and the lives of brilliant young educationist, only to gain control over their adult son and daughter.

2. In the meantime, another Writ Petition, being Writ Petition (Crl.) D. No.24281 of 2008 (since renumbered as Writ Petition (Crl.) No.92 of 2008) was filed by one Ms. Annette Kotian and the same was taken up for consideration along with the Writ Petition filed by Leila David on 29th August, 2008. At the outset, this Court observed that some of the allegations made in the two writ petitions, as well as in the supporting affidavits, appeared prima facie to be per se contempt of this Court. Although, the petitioners were asked to withdraw the allegations made, they refused to do so and submitted that they stood by the said averments and strongly urged the Court to issue process to arrest the 12 Judges of the High Court of Bombay mentioned in prayer (4) to the Writ Petition. In view of the obstinate stand taken by the petitioners, who were appearing in person, the Court had no alternative but to issue notice as to why contempt proceedings should not be issued against them. The matters were thereafter directed to be placed before the appropriate Bench presided over by the Hon'ble Dr. Justice Arijit Pasayat (as His Lordship then was).

3. The said two writ petitions along with a third Writ Petition, being WP (Crl) D. No.25985 of 2008, filed by one Pavithra Murali and four Special Leave Petitions were listed before the Bench presided over by Dr. Justice Pasayat on 10th September, 2008. While the writ petitioners appeared in person, the respondents were duly represented by counsel and after hearing the petitioners, the Court was of the view that the show cause reply was equally contumacious and some action was required to be taken against the petitioners for contempt of this Court. Accordingly, the Court initiated proceedings for contempt and observed that charges would be framed. Since the writ petitioners were appearing in person, the Court appointed Mr. G.E. Vahanvati (who was then the learned Solicitor General) to act as amicus curiae, in the matter. The matters were directed to be listed on 18th November, 2008, with liberty to the petitioners to file any further response if they

wished to by 10th November, 2008. The Special Leave Petitions, which had appeared along with the writ petitions, were de-linked. The writ petitions and the suo motu contempt proceedings were taken up for consideration on 20th March, 2009. As it appears from the record, when the hearing commenced, the writ petitioners disrupted the proceedings by using very offensive, intemperate and abusive language at a high pitch. The order recorded by Dr. Justice Pasayat indicates that one of the petitioners had gone to the extent of saying that the Judges should be jailed for having initiated proceedings against them and that the Judges should be punished for not taking care of their fundamental rights. One of the writ petitioners, namely, Dr. Sarita Parikh, went to the extent of throwing a footwear at the Judges. His Lordship also recorded that all this happened in the presence of the learned Solicitor General of India (now Attorney General for India), two learned Additional Solicitor Generals and a large number of learned counsel and advocates, including the President of the Supreme Court Advocates-on-Record Association. Having recorded the said incidents which had occurred within the sight of the Hon'ble Judges and the other persons present in Court, Dr. Justice Pasayat held such behaviour to be contemptuous in the face of the Court. Since the petitioners stood by what they had said and done in Court, His Lordship felt that there was no need to issue any notice and holding them to be guilty of criminal contempt of this Court, inflicted a punishment of three months' simple imprisonment on them.

4. The said course of action did not meet the approval of the other learned Judge, the Hon'ble Mr. Justice Asok Kumar Ganguly, who by a separate order of even date, observed that the writ petitioners could not have been punished for contempt without due compliance with the provisions of Section 14(1)(a)(b)(c) and (d) of the Contempt of Courts Act, 1971. His Lordship was also of the view that the Court's power under Article 142 was not meant to circumvent the statutory requirements. His Lordship, accordingly, observed as follows : Therefore, in this view of the matter, I cannot agree with the view expressed in the order of His Lordship Justice Pasayat, for sending the alleged contemnors to prison for allegedly committing the contempt in the face of the Court without following the mandate of the Statute under Section 14. I, therefore, cannot at all agree with His Lordship's order by which sentence has been imposed. I am of the view that the liberty of those persons cannot be affected in this manner without proceeding against them under Section 14 of the Act. In my opinion Section 14 is in consonance with a person's fundamental right under Article 21.

5. Having regard to the difference of opinion as to the procedure to be adopted before the petitioners could be found guilty of contempt of Court and sentenced, the matter was directed to be placed before Hon'ble The Chief Justice of India and a direction was given that the contemnors would remain in custody till the matter could be heard by an appropriate Bench.

6. On the same day the Hon'ble Chief Justice constituted a Bench comprising the Hon'ble Mr. Justice B.N. Agrawal (as His Lordship then was), the Hon'ble Mr. Justice G.S. Singhvi and the Hon'ble Mr. Justice H.L. Dattu and directed the matter to be placed before the said Bench on 23.3.2009 at 2.00 p.m. A direction was also given for production of the contemnors before the said Bench on the said date. Pursuant to the said order, the matters were duly listed before the said Bench and were adjourned till 13th April, 2009. In the meantime, the alleged contemnors were enlarged on bail and the application for intervention filed by the Supreme Court Bar Association was allowed. On 15th April, 2009, the matters were released by the aforesaid Bench and were subsequently placed before this Bench.

7. The matters were thereafter taken up by this Bench on 5th May, 2009, when the Writ Petitions filed by the alleged contemnors were taken up for consideration for the purpose of issuance of

notice and were, thereafter, directed to be listed on 16th July, 2009, at 10.30 a.m. for passing orders. The contempt proceedings were also directed to be listed for consideration on that date.

8. On 16th July, 2009, when the two differing orders dated 20.3.2009, in the Contempt Proceedings were taken up for consideration, the alleged contemnors refused to make any submissions and insisted that the hearing of the Writ Petitions, which had already been concluded, be reopened. Having no other alternative this Court requested the learned Attorney General, the learned Solicitor General as well as the President of the Supreme Court Bar Association to make their submissions in regard to the two orders on account of which the matter was referred to this Bench.

9. The learned Attorney General supported the view taken by Dr. Justice Arijit Pasayat and submitted that Section 14 of the Contempt of Courts Act, 1971, did not preclude the Court from deciding the contempt matter summarily when such contempt was committed in the face of the Court. The learned Attorney General submitted that while Section 14 provides a procedure to be normally followed so as to give the contemnors an opportunity of showing cause against the action proposed to be taken, in cases of the instant nature where the incident had taken place within the precincts of the Court room and within the sight of all present therein, including the Hon'ble Judges who constituted the Bench, there could be little justification in going through the procedure prescribed in Section 14 in order to establish that the alleged contemnors had, in fact, committed contempt of Court. The learned Attorney General submitted that the footwear was thrown at the Hon'ble Judges within the vision of everyone present in the Court and the very attitude of the alleged contemnors was not only demeaning but contumacious as well and calculated to scandalize and lower the image of the Court and the Judiciary as a whole. Apart from the above the learned Attorney General also submitted that the language used in the writ petitions and the reliefs prayed for was also aimed at scandalizing the Court and debasing the judicial process in the eyes of the public. It was urged that the alleged contemnors have scant regard for the Courts and the judicial process and were required to be dealt with firmly in order to uphold the dignity and majesty of the Courts.

10. In support of his submissions the learned Attorney General referred to several decisions, and, in particular, that of a three Judge Bench of this Court in the case of Vinay Chandra Mishra [(1995) 2 SCC 584], which was a criminal contempt proceeding initiated by this Court on a letter received from the Acting Chief Justice of the Allahabad High Court alleging highly contumacious conduct on the part of Shri Vinay Chandra Mishra, a Senior Advocate and President of the Bar and Chairman of the Bar Council of India, which not only tended to scandalize and over-awe the court, but to lower its dignity in the eyes of the public. This Court, accordingly, in exercise of its powers under Article 129 and Article 142 of the Constitution, sentenced the contemnor, Vinay Chandra Mishra, to undergo simple imprisonment for 6 weeks and also suspended him from practising as an advocate for a period of 3 years from the date of the order. The sentence of imprisonment was, however, kept suspended for a period of 4 years with the provision for activating the same in case the contemnor was convicted for any other offence of contempt of court within the said period.

12. The learned Solicitor General and the President of the Bar Association, while adopting the submissions made by the learned Attorney General, submitted that the contempt having been committed in the face of the court, following the procedure in Section 14 would be redundant, since the incident had taken place in full public view and within the view of the Judges and no other explanation could be given with regard to the said incident. Furthermore, the contemnors did not show any sign of remorse or repentance for their conduct, but continued to behave intemperately,

throwing all decorum to the winds.

13. The learned Solicitor General also contended that despite having been given several opportunities to purge their contumacious behaviour, not only had the alleged contemnors remained defiant, but they had compounded the offence by filing a fresh writ petition, wherein, not only were the earlier statements reiterated, but the Office of the President of India, the Prime Minister, Attorney General and other high dignitaries were also scandalized and denigrated. The learned Solicitor General submitted that this was not a case where the contemnors had committed an error unintentionally, but the actions of the contemnors were deliberate and wilful and were carried out purposefully. Accordingly, the contemnors did not deserve any leniency and were required to be dealt with in a firm manner. At this stage, we had invited the contemnors to make their submissions with regard to the contempt proceedings taken against them and the submissions made by the learned Attorney General as well as the Solicitor General and the President of the Supreme Court Bar Association. As the contemnors submitted that they required some time to consider the judgments cited by the Attorney General, the matter was adjourned.

14. On 20th August, 2009, when the matter was taken up once again, an unnumbered application filed in W.P. (Crl.) Diary No.2428/2008 was found on record asking the Bench to recuse itself from the present case. For the reasons given in our order of 20th August, 2009, such prayer was rejected and despite being given an opportunity to express regret for their scandalous behaviour, not only Ms. Annette Kotian, one of the writ petitioners, but the other contemnors continued to use indecorous, indecent, slanderous and offensive language, claiming that it was their fundamental right to protect themselves under Article 21 of the Constitution. Reference was also made to Article 19 and Ms. Kotian submitted that she was addressing the Court in keeping with the fundamental right to free speech guaranteed under Article 19 of the Constitution.

Ultimately, Ms. Kotian speaking for herself and the other contemnors, contended that since all the orders which had been passed by this Court violate the fundamental rights of the contemnors, there was no need for further submissions to be made in the contempt matter.

15. Dr. Sarita Parikh submitted that she had thrown the footwear in order to make the learned Judges sitting on the Bench aware of her constitutional and fundamental rights which she claimed had been violated. This Bench, therefore, had no option but to reject the application filed by Ms. Kotian asking this Bench to recuse itself from the case. On the other hand, the fresh writ petition which was filed by the contemnors was taken up for consideration and for the reasons recorded in our order of 20th August, 2009, the same was also dismissed.

16. As far as the first batch of writ petitions filed by the contemnors are concerned, the very nature of the pleadings and the prayers made therein, require the same to be dismissed in limine. Despite the above, we had given an opportunity to the writ petitioners/contemnors to redeem themselves, which opportunity they deliberately spurned and proceeded to file a fresh writ petition, which, as indicated hereinabove was replete with the earlier scandalous remarks and fresh expletives. We, therefore have no hesitation in dismissing the writ petitions filed by Leila David, Ms. Annette Kotian and Ms. Pavithra Murali, with cost of Rs.1 lakh in respect of each writ petition to be paid by the writ petitioners into the Registry of this Court within 12 weeks from date, failing which further action will be taken against them. As and when such deposits are made, the Registry shall keep the same in short-term Fixed Deposits pending further orders.

17. As far as the suo motu proceedings for contempt are concerned, we are of the view that Dr. Justice Arijit Pasayat was well within his jurisdiction in passing a summary order, having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India. While, as pointed out by Mr. Justice Ganguly, it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of Court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant. The incident which took place in the court room presided over by Dr. Justice Pasayat was within the confines of the court room and was witnessed by a large number of people and the throwing of the footwear was also admitted by Dr. Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Dr. Justice Pasayat cannot be faulted.

18. Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression Contempt in the face of the Supreme Court has been interpreted to mean an incident taking place within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident. In re: Nand Lal Balwani [(1999) 2 SCC 743], it was held that where an Advocate shouted slogans and hurled a shoe towards the Court causing interference with judicial proceedings and did not even tender an apology, he would be liable for contempt in the face of the Court. It was observed by the Bench of three Judges which heard the matter that law does not give a lawyer, unsatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court. It was also observed that Courts could not be intimidated into passing favourable orders. Consequently, on account of his contumacious conduct, this Court sentenced the contemnor to suffer four months simple imprisonment and to pay a fine of Rs.2,000/-. In another decision of this Court in Charan Lal Sahu v. Union of India and another [(1988) 3 SCC 255], a petition filed by an experienced advocate of this Court by way of a public interest litigation was couched in unsavoury language and an intentional attempt was made to indulge in mudslinging against the advocates, the Supreme Court and other constitutional institutions. Many of the allegations made by him were likely to lower the prestige of the Supreme Court. It was also alleged that the Supreme Court had become a constitutional liability without having control over the illegal acts of the Government. This Court held that the pleadings in the writ petition gave the impression that they were clearly intended to denigrate the Supreme Court in the esteem of the people of India. In the facts of the case, the petitioner therein was prima facie held to be guilty of contempt of Court.

19. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public. In the instant case, after

being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behaviour, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to to further denigrate and scandalize and over-awe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as licence for indulging in indecorous behaviour and making scandalous allegations not only against the judiciary, but those holding the highest positions in the country. The writ proceedings have been taken in gross abuse of the process of Court, with the deliberate and wilful intention of lowering the image and dignity not only of the Court and the judiciary, but to vilify the highest constitutional functionaries.

20. In such circumstances, while agreeing with the procedure adopted by Dr. Justice Pasayat in the facts of this case, we are not inclined to interfere with the sentence which has been imposed on the contemnors. The order dated 20th March, 2009, granting bail to the contemnors is hereby recalled. The Secretary General is directed to take the contemnors into custody forthwith and to arrange to have them sent to the appropriate jail to serve out the sentence.

21. Let arrest warrants be issued against Leila David and Pavithra Murali, who are not present in Court today, despite our directions. The Commissioner of Police, Mumbai, is directed to take steps to execute the arrest warrants and to take them into custody and to arrange for their detention in prison in terms of the order passed on 20th March, 2009, and the order being passed today.

22. Let copies of this order be made available to the Registry for communication to the Commissioner of Police, Mumbai, forthwith.