

SUPREME COURT OF INDIA

Sahdeo @ Sahdeo Singh

Vs.

State of U.P.

Crl.A.No.527 of 2002

(J.M.Panchal and Dr.B.S.Chauhan JJ.)

23.02.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. The present appeals have been filed against the judgment and order of the Allahabad High Court dated 20.12.2001 passed in Criminal Contempt No. 69 of 1997, convicting the appellants for not complying with the and sentencing them for six months' imprisonment and also imposing a fine to the tune of Rs.2000/- each. Further, direction has been issued to the State Government to terminate the services of the appellants after holding disciplinary proceedings.

2. The facts and circumstances giving rise to the present appeals are that one Ramwati lodged an FIR dated 01.06.1997 in the Police Station Kotwali Ghaziabad with an allegation that her son Tej Veer Singh @ Pappu, a man of absolutely clear antecedents, never involved in any criminal case, who was running a sweet mart shop, was going to Allahabad by Prayagraj Express on 29.05.1997. He was apprehended by Deep Chand, Sub-Inspector of Police, posted at Police Station, Sector 24, Noida and Constable Ramesh Chandra, posted in the office of Superintendent of Police (R.A.) Ghaziabad along with some other policemen, from Shyamal Chauk, Sibbanpura, Ghaziabad. Tej Veer Singh was carrying a briefcase containing clothes and Rs. 40000/- in cash apart from the ticket. At the time of apprehending, neither the reason for his arrest nor the destination, where he was being taken to, was disclosed to him. His family members ran from pillar to post to know his whereabouts but in vain. On 30.05.1997, telegraphic information regarding abduction of Tej Veer Singh @ Pappu by police was sent to the Senior Superintendent of Police, Ghaziabad and Inspector General of Police, Meerut Zone.

3. No action was taken on the aforesaid FIR, thus Smt. Ramwati, mother of Tej Veer Singh made complaint to the Senior Suptd. of Police, Ghaziabad, Hon'ble the Chief Justice of India and the Chairman, National Human Rights Commission, New Delhi. The case was registered only on 04.06.1997 under Section 364 of Indian Penal Code, 1860 (hereinafter called IPC).

However, no progress was made in the investigation. Being aggrieved, a Habeas Corpus petition, being numbered as CrI. Misc. (Habeas Corpus) Writ Petition No. 20040 of 1997, was filed in June, 1997 by one M. C. Verma, being next friend of the detenu Tej Veer Singh before the Allahabad High Court. In the said petition, allegations had been made that the respondent therein, Deep Chand, Sub-Inspector of Police and Constable Ramesh Chandra had detained Tej Veer Singh illegally since 29.5.1997 and his whereabouts were not known.

4. As the High Court could not get any information from the State regarding the whereabouts of Tej Veer Singh, the Court, vide order dated 30.07.1997, directed the District Judge, Ghaziabad to hold an inquiry regarding the allegations made in the Habeas Corpus petition. The purpose of holding an inquiry was to find out as to whether the police was responsible for his arrest and thereafter, his disappearance.

5. The District Judge submitted his report dated 03.12.1997 wherein it was mentioned that Yashpal, the elder brother of Tej Veer Singh, was a hardened criminal, and was wanted in large number of criminal cases. The police had taken away Tej Veer Singh alongwith one Jagdish Kumar to know the whereabouts of Yashpal to Murad Nagar Police Station, where they were beaten up. However, no information could be gathered from either of them about Yashpal. It was found that Jagdish Kumar was released by the police from its custody at 4.00 AM on 30.05.1997 but Tej Veer Singh remained under detention and still remained untraceable. Sub-Inspector Deep Chand was the mastermind in abducting Tej Veer Singh and Constable Ramesh Chandra had participated in illegal detention. Sub-Inspectors R. P. Singh and Satya Veer Singh, who were allegedly participated in abduction, were exonerated. However, Sahdeo Singh, Lila Dhar (appellants) and one Sujan Singh, Constable, were found to have participated in abduction. Sub- Inspector Deep Chand, had died in a car accident on 20.08.1997. After receiving the report from the District Judge, the High Court on 4.12.1997 issued notices to the four indicted persons initiating proceedings for criminal contempt suo motu. Sujan Singh submitted an application before the High Court that during the inquiry by the District Judge, no notice/opportunity of hearing was given to him. The High Court asked the 4 District Judge, Ghaziabad to provide an opportunity of hearing to the said applicant-Sujan Singh and submit a supplementary report. The said report was submitted on 10.07.1998 exonerating Sujan Singh from any criminal liability. Sahdeo Singh and Ramesh Chandra submitted their replies to the said Show Cause Notices dated 4.12.1997. Lila Dhar did not submit any reply.

“As the whereabouts of Tej Veer Singh could not be known, the High Court disposed of the Habeas Corpus petition vide judgment and order dated 20.12.2001 transferring the investigation to the Central Bureau of Investigation (hereinafter called, "CBI"). In contempt case, the Court came to the conclusion that taking the said Tej Veer Singh into custody, was in violation of the directions issued by this Court in D. K. Basu (supra) and held all the three alleged contemnors guilty. Constable Ramesh Chandra was sentenced for six months' imprisonment and a fine of rupees one lakh was imposed. In addition, Rs. 5000/- was imposed as costs. The appellants were imposed the punishment of six months' imprisonment and a fine of Rs. 2000/- each. Further

direction was issued to the State to terminate their services after holding disciplinary proceedings. Hence, these appeals.”

6. Sh. Jitendra Mohan Sharma and Sh. P.K. Jain, learned counsel appearing for the appellants, have submitted that the High Court had committed an error as while disposing of the Habeas Corpus petition it observed that Tej Veer Singh had died and, therefore, no purpose would be served in continuing with the Habeas Corpus petition. There was not even prima facie evidence against the appellants in contempt proceedings. The court did not adopt the fair procedure. Even charges had not been framed.

“The enquiry conducted by the District Judge, at the most, could be treated to be a preliminary enquiry. The High Court erred in placing reliance on a preliminary enquiry report and convicting the appellants without furnishing the copy thereof to them. More so, the contempt proceedings are quasi- criminal in nature. The Court while deciding the criminal case does not have competence to issue any direction affecting the civil rights of the parties. Therefore, the judgment and order impugned is liable to be set aside.

On the contrary, Sh. R.K. Gupta, learned counsel appearing for the State of U.P. and Sh. K.C. Lamba, learned counsel appearing for Smt.

Ramwati, the mother of Tej Veer Singh, defended the impugned judgment and order contending that a fair trial had been conducted. The appellant Lila Dhar did not even submit the reply to the Show Cause Notice issued by the 6 High Court. Therefore, no fault could be found with the impugned judgment and order. The appeals are liable to be dismissed.

We have considered the rival submissions made by the learned counsel for the parties and perused the record.”

7. The impugned judgment and the record of the case reveal that as no progress was likely to be made in the Habeas Corpus petition, the District Judge, Ghaziabad, was directed to conduct an inquiry in the allegations made in the petition and also taking note of the contents of the FIR dated 4.6.1997 lodged by Smt. Ramwati, the mother of Tej Veer Singh. The District Judge submitted his report after recording evidence of the witnesses, particularly, the family members and friends of Tej Veer Singh, and also hearing the appellants and other police officials. On the basis of the report submitted by the District Judge, the Habeas Corpus petition was disposed of vide Order dated 20.12.2001 presuming that Tej Veer Singh was dead.

8. Section 108 of Indian Evidence Act, 1872 (hereinafter called `Evidence Act') provides for presumption of a person being dead in case he has not been heard of for seven years. In the instant case, only a period of 4= years had elapsed. Therefore, we are not able to understand as under what circumstances, such a presumption could be drawn by the High Court.

9. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by mis-understanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home.

“There may possibly be a case where disobedience is accidental. If that is Justice and his companion Justices of the *Orissa High Court & Anr.*²).

10. *West Bengal & Anr.*³, this Court has observed as under:-

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

11. The same view has been re-iterated by this Court in *Aligarh*⁴.

12. *Rani Sonabati Kumari*⁵, held that the provisions of Contempt of Courts Act, 1971 (for short `the Act, 1971') deal with the wilful defiance of the order passed by the Court. Order of punishment be not passed if the Court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order.

13. Judges of the *Pepsu High Court at Patiala*⁶, this Court placing reliance upon the judgment of the *Privy Council in Andre Paul*⁷ held that the proceedings under the Contempt of Courts Act are quasi-criminal in nature and orders passed in those proceedings are to be treated as orders passed in criminal cases.

14. This Court held that burden and standard of proof in contempt proceedings, being quasi-criminal in nature, is the standard of proof required in criminal proceedings, for the reason that contempt proceedings are quasi- criminal in nature. & *Ors.*⁸, this Court placing reliance upon a large number 1 *Newatia & Ors.*⁹, held that jurisdiction of the contempt has been conferred on the Court to punish an offender for his contemptuous conduct or obstruction to the majesty of law, but in the case of quasi- criminal in nature, charges have to be proved beyond reasonable doubt and alleged contemnor becomes entitled to the benefit of doubt. It would be very hazardous to impose sentence in contempt proceedings on some probabilities.

15. Dealt with an untoward incident i.e. ex-facie contempt in Allahabad High Court wherein, the High Court passed certain orders without following the procedure prescribed in the Rules applicable in such proceedings. This Court held that power of the High Court even under Article 215 of the Constitution has to be exercised in accordance with the procedure prescribed by law. The Court observed as under:

“12. we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the 1 procedure prescribed by law. It is in these circumstances the impugned order cannot be sustained.” (Emphasis supplied) this Court held that in contempt proceedings the court must conclude the trial and complete the proceedings "in accordance with the procedure prescribed by law".

However, for enforcing the order passed by the Court "a roving enquiry is not permissible". The proceedings had to be completed most expeditiously and the court has to permit the parties to cross-examine the witnesses to enable the court to reach a particular finding.”

16. The Court should not punish an alleged contemnor without any foundation merely on conjectures and surmises in criminal contempt. (Vide *State of Haryana & Ors*,¹¹; *Contemnor: In re, Court, Bombay*¹²),. this Court while dealing with the same issue held as under:

“140.Now, it is one thing to say that the standard of proof in a contempt proceeding is no less rigorous than a criminal trial but it is something entirely different to insist that the manner of proof for the two proceedings must also be the same.

141. It is now well settled and so also the High Court has held that the proceeding of contempt of court is sui generis. In other words, it is not strictly controlled by the provisions of CrPC and the Evidence Act. What, however, applies to a proceeding of contempt of court are the principles of natural justice and those principles apply to the contempt proceeding with greater rigour than any other proceeding. This means that the court must follow a procedure that is fair and objective; that should cause no prejudice to the person facing the charge of contempt of court and that should allow him/her the fullest opportunity to defend himself/herself.”

(Emphasis added)

18. This Court *In Re: Vinay Chandra Mishra*¹³ (the alleged contemnor), has observed that a contempt amounts to an offence but it is an offence sui generis and hence for such an

offence, the procedure adopted both under the common law and the statute law has always been summary. The Court held that in spite of the fact that it is a summary procedure, there must be an opportunity to the alleged contemnor of meeting the charge. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegation is made clear or otherwise the contemnor is aware of the specific allegation, it is not always necessary to formulate the charge. So long as the contemnor's interest is adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt cannot be found fault with.

19. In *Daroga Singh* (supra), this Court observed that in case, the alleged contemnor feels that there is a necessity to cross-examine the witnesses i.e. deponents of affidavits filed against him, the alleged contemnor must be given an opportunity to cross-examine the said witnesses provided it is so asked by him. This Court observed that in Contempt proceedings, a summary procedure is to be adopted for the reason that matter is to be disposed of most expeditiously and it is for this reason that in spite of the fact that proceedings are quasi-criminal in nature, the procedure under Cr.P.C. or Evidence Act is not made applicable.

20. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance of the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt.

“There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of Code of Criminal Procedure, 1973 (hereinafter called, "Cr.P.C.") and Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory Rules framed for the purpose.”

21. The instant cases are required to be examined in view of the aforesaid settled legal proposition. The contempt proceedings had been initiated under the Act, 1971. Section 23 of the Act 1971 enables the High Court to frame rules providing for a procedure in contempt cases. In view thereof, the Allahabad High Court framed the rules by adding chapter XXXV-E in the Allahabad High Court Rules, 1952 (hereinafter called the 'Rules 1952') vide amendment published in Uttar Pradesh Gazette, Part II dated 12.2.1977. As per the said

rules, a criminal contempt is to be dealt with by the Division Bench and a detailed procedure to file the application etc. has been laid down therein. Once the Court is prima facie satisfied that there is a case to proceed with the contempt against a person concerned, the Division Bench in such case has to proceed giving strict adherence to the procedure prescribed under the Rules 1952. Rule 5 of the Chapter XXXV-E reads as under:-

“5. Issuance of notice. - Such allegations contained in the petition as appears to the Court to make out a prima facie case of contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges. (Emphasis added).

Rule 6 thereof provides mandatorily that the show cause notice issued under Rule 5 must be accompanied with material documents. The Rule reads as under:- 1 "6. Documents accompanied notice. - Where an order has been made directing that notice be issued to any person to show cause why he should not be punished for contempt of Court, a date shall be fixed for the hearing and a notice thereof in the prescribed form given to the person concerned. The notice of a criminal contempt shall also be served on the Government Advocate. The notice shall be accompanied by copies of the application, motion and the affidavit or a copy of the reference by a subordinate court as the case may be, and a copy of the charge or charges as framed by the Court, and shall require the person concerned to appear, unless otherwise ordered, in person before the Court at the time and on the date specified therein to show cause why he should not be punished for Contempt of Court. Notice of every proceeding under Section 15 of the Act shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise."

(Emphasis added) Thus, it is evident that while initiating contempt proceedings the Court has to frame the charge (s) and serve the same alongwith other relevant material upon the alleged contemnor. This is a mandatory requirement under the Rules 1952.”

22. The question does arise as to whether the contempt proceedings had been concluded in conformity with the aforesaid Rules? The enquiry entrusted to the District Judge was to find out as what was the truth in the allegations made in the Habeas Corpus Petition about kidnapping of Tej Veer Singh. After submission of both the reports by the District Judge, Ghaziabad, the Court suo motu initiated the contempt proceedings. The 1 appellants ought to have been told clearing as for what offence they were being tried. We have examined the original record of the case and to our utter surprise, we find that show cause notices for suo motu contempt Ramesh Chandra & Ors.". The notice reads as under:

“IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD QUASI CRIMINAL SIDE NO.48- NOTICE In the matter of Crl. Miscellaneous Contempt Case No.69/97 Between State of U.P. ..Applicant And Ramesh Chandra & Ors. ..Opposite Party Sri Lilidhar Constable Police Station Muradnagar, District Ghaziabad.

To, WHEREAS the abovenamed applicant has represented to this Court that you have committed contempt of court. AND WHEREAS the 31st day of March, 1998 has been fixed for the hearing of the said case:

NOTICE is hereby given to you calling upon you to appear in person in this Court on the above mentioned date at 10 O' clock in the forenoon to show cause why you should not be punished for contempt of court.

Given under my hand and the seal of the Court, This 20th day of February, 1998.
Deputy Registrar Allahabad”

23. The notices had been served upon the appellants and other alleged contemnor. There was no case filed by the State of U.P. before the High Court in respect of abduction of Tej Veer Singh nor any application for initiating contempt proceedings was ever filed by any person. Admittedly, the proceedings were initiated by the High Court suo motu. The notice itself remains incomplete, inaccurate and mis-leading. The Registry of the High Court issued the "dotted lines notice" without any sense of responsibility.

“The notice did not mention as what was the allegation/accusation against either of them. It did not contain any charge(s) against either of them. In D.K. Basu (supra) this Court has issued as many as eleven directions to the police authorities inter-alia, furnishing the information of the person arrested to his relatives; the person should be arrested only by the police officials with clear identification marks; a memo of arrest is to be prepared at the time of arrest, which should be attested at least by some person from the locality; the time, place of arrest and venue of custody must be disclosed etc. etc. This Court further observed that non-observance of any of the directions issued therein would make the Police personnel liable for departmental action and render them liable to be punished for Contempt of Court and proceedings for Contempt of Court would be initiated in the High Court having territorial jurisdiction over the matter.”

24. The notice did not make any reference to the judgment of this Court in D.K.Basu (supra). Neither the report of the District Judge nor any evidence collected by him during that inquiry, nor any other document relevant to the case was annexed with the said notice. Rather, considering the reply of Constable Ramesh Chandra and Sahdeo Singh, the impugned judgment and order has been passed. The aforesaid Rules 1952 provide for a specific procedure to hold the trial in contempt cases. The Rules 1952 mandatorily require the framing of charge(s) and furnishing the copy of the documents to the alleged contemnor on the basis of which, the charges have been framed.

“In the instant cases, there has been no compliance of these mandatory provisions contained in the Rules. In absence of the charge(s), a delinquent/accused/alleged contemnor may not be able to furnish any defence as he is not aware as to what

charge(s) he is required to meet. Every statutory provision requires strict adherence, for the reason that the Statute creates rights in favour of persons concerned. The impugned judgment suffered from non-observance of the principles of natural justice and not 2 ensuring the compliance of Statutory Rules, 1952. Thus, the trial itself suffered from material procedural defect and stood vitiated.

The impugned judgment and order, so far as the conviction of the appellants in Contempt proceedings are concerned, is liable to be set aside.”

25. By the impugned judgment and order, Constable Ramesh Chandra was convicted and punished with imprisonment for six months. Further, a fine of Rs. 1 lakh and costs of Rs. 5000/- were also imposed on him. We are told that during the pendency of his appeals, i.e. Criminal Appeal Nos. 530 & 532 of 2002, Constable Ramesh Chandra has died and those appeals have been disposed of accordingly. Appellants were, however, convicted and imposed punishment as referred to hereinabove.

26. In the instant cases, the record reveals that the Habeas Corpus petition was taken by the High Court on 30.07.1997 and directed the District Judge, Ghaziabad to hold the inquiry on the allegations made in the Habeas Corpus petition. The District Judge submitted the report on 03.12.1997. The Court considered the case on 4.12.1997 and initiated contempt proceedings against appellants and others suo motu. Matter was remanded to the District Judge for further inquiry in view of the fact that Sujan Singh was not heard in the 2 earlier inquiry. The District Judge, Ghaziabad, submitted the supplementary inquiry report on 12.07.1998. After hearing the parties the judgment was reserved on 12.03.1999. Thereafter, it was listed on 14.12.2001 i.e. after 2 years and 9 months for fresh arguments. However, the counsel for the parties stated that nothing more was required to be submitted except what had been argued earlier. The judgment was pronounced on 20.12.2001. It is apparent from the order sheets itself that the matter remained pending before the Court, so far as the contempt proceedings are concerned, for more than three years which itself is in contravention of the true spirit of the purpose of initiation of the contempt proceedings.

27. In view of the above, we reach the inescapable conclusion that contempt proceedings had been concluded without ensuring the compliance of the mandatory provisions of the Rules 1952. The appellants had never been informed as what were the charges against them. The relevant documents on the basis of which the High Court had taken a prima facie view while initiating the contempt proceedings suo motu, had not been made available to them. The notice itself was not only defective, but inaccurate and totally mis-leading. The facts and circumstances of the case warrant reversal of the aforesaid judgment and order.

“This Court, while entertaining these appeals, granted interim relief to the appellants. Thus, State could not initiate disciplinary proceedings against either of them.

The appeals stand allowed. The judgment and order dated 20.12.2001 passed by the Allahabad High Court in Criminal Contempt No.69 of 1997 is hereby set aside.”

¹*AIR 1997 SC 610*

³*AIR 1969 SC 189*

⁵*AIR 1961 SC 221*

⁷*AIR 1936 PC 141*

⁹*AIR 2000 SC 833*

¹¹*AIR 1996 SC 2326*

¹³*(1995) 2 SCC 584*

²*AIR 1961 SC 1367*

⁴*(1995) 3 SCC 559*

⁶*AIR 1954 SC 186*

⁸*AIR 2001 SC 1293*

¹⁰*AIR 2009 SC 735*

¹²*AIR 2003 SC 3039*