

SUPREME COURT OF INDIA

Amicus Curiae

Vs.

Prashant Bhushan

Contempt Petition (Crl.) No.10 of 2009

(Altamas Kabir, Cyriac Joseph and H.L. Dattu JJ.)

14.07.2010

ORDER

Altamas Kabir, J.

1. During the course of hearing of certain Interlocutory Applications in Writ Petition (C) No.202 of 1995, an application was filed by the Amicus Curiae, Mr. Harish N. Salve, learned Senior Advocate, drawing the attention of this Court to certain statements made by Respondent No.1, Shri Prashant Bhushan, Senior Advocate, which was reported in Tehelka magazine, of which Shri Tarun J. Tejpal, the Respondent No.2, was the Editor-in- Chief. The learned Amicus Curiae drew the attention of the Court to certain statements which had been made by the Respondent No.1 in an interview given to Ms. Shoma Chaudhury, wherein various statements were made alleging corruption in the judiciary and, in particular, the higher judiciary, without any material in support thereof. In the interview he went on to say that although he did not have any proof for his allegations, half of the last 16 Chief Justices were corrupt. He also made a serious imputation against the Hon'ble the Chief Justice of India, Justice S.H. Kapadia, as His Lordship then was, alleging misdemeanor with regard to the hearing of a matter involving a Company known as Sterlite, in which Justice Kapadia had certain shares, deliberately omitting to mention that the said fact had been made known to the Counsel appearing in the matter, who had categorically stated that they had no objection whatsoever to the matter being heard by His Lordship.

2. On 6th November, 2009, when the said facts were placed before the Bench presided over by Hon'ble the Chief Justice, K.G. Balakrishnan, as His Lordship then was, in which Justice Kapadia was also a member, directions were given to issue notice and to post the matter before a three Judge Bench of which Justice Kapadia was not a member. It should, however, be indicated that Justice Kapadia was not a party to the aforesaid order that was passed. The matter was thereafter placed before us on 19.01.2010 for consideration. On the said date, we requested Mr. Harish N. Salve, learned Senior Advocate, to continue to assist the Court as Amicus Curiae in the matter which was directed to be listed for further consideration as to whether on the basis of the prayers made in the application, this Court should take suo motu

cognizance of the alleged contempt said to have been committed by the respondents in the application which was numbered as Contempt Petition (Crl.) No.10 of 2009.

3. The matter was, thereafter, heard at length by us on the question of maintainability of the contempt proceedings and also on the question as to whether this Court should take suo motu cognizance and proceed accordingly.

4. Mr. Ram Jethmalani, learned Senior Advocate appearing for the Respondent No.1, Mr. Prashant Bhushan, Advocate, submitted that the contempt proceeding was not maintainable not only on account of the provisions of Section 15 of the Contempt of Courts Act, 1971, but also in view of the 1975 Supreme Court Rules regarding proceedings for Contempt. He submitted that the report published in Issue No.35 of Volume 6 of Tehelka magazine dated 5th September, 2009, which comprised the contents of the interview given by the Respondent No.1 to the Tehelka magazine, had been placed before the Court on 6th November, 2009 and upon hearing the counsel present, the Court directed the matter to be taken on board and directed notice to issue.

5. Mr. Jethmalani submitted that in relation to matters involving contempt of the Supreme Court, Rules have been framed by the Supreme Court itself under powers vested in it under Section 23 of the Contempt of Courts Act, 1971, read with Article 145 of the Constitution of India. The said Rules described as the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, laid down the procedure to be followed in matters relating to taking of cognizance of criminal contempt of the Supreme Court under Section 15 of the Contempt of Courts Act, 1971. Mr. Jethmalani submitted that Rule 3 of the aforesaid Rules enables the Court to take action in a case of contempt other than the contempt committed in the face of the Court and provides as follows:

“3. In case of contempt other than the contempt referred to in rule 2, the Court may take action: -

(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.”

6. Mr. Jethmalani submitted that the order passed on 6th November, 2009 was not on suo motu cognizance taken by this Court, nor on a petition made by the Attorney General for India or Solicitor General of India and must, therefore, have been made under Rule 3(c) on a petition made by the Amicus Curiae, Mr. Harish N. Salve, Senior Advocate, in which case, the same ought not to have been entertained without the consent in writing of the Attorney General or Solicitor General. Mr. Jethmalani submitted that in that view of the matter, the contempt proceedings were without jurisdiction and could not be proceeded with.

7. Mr. Jethmalani also urged that even Rule 6 of the aforesaid Rules had not been followed, as notices have not been issued to the respondents in Form 1, as prescribed and the proceedings were, therefore, liable to be discontinued on such ground as well.

8. In support of his aforesaid submissions, Mr. Jethmalani referred to and relied upon the decision of this Court in *P.N. Duda vs. P. Shiv Shanker & Ors.*¹, in which the provisions of Section 15(1)(a) and (b) of the Contempt of Courts Act, 1971, read with Explanation (a) and Rule 3(a), (b) and (c) of the Contempt of Supreme Court Rules, 1975, had been considered in paragraphs 53 and 54 of the judgment. It was pointed out that a direction had been given by this Court that if any information was lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. On the other hand, such a petition was required to be placed before the Chief Justice for orders in Chambers and the Chief Justice could decide, either by himself or in consultation with the other judges of the Court, whether to take any cognizance of the information. Mr. Jethmalani submitted that since, despite the aforesaid direction, the application filed by the Amicus Curiae had been placed before the Court in its judicial side, the same was not maintainable on such score as well and the proceedings were liable to be discontinued on such ground also.

9. Mr. Jethmalani also referred to the decision of this Court in *Bal Thackrey vs. Harish Pimpalkhute Ors.*² wherein in the absence of the consent of the Advocate General in respect of a contempt petition filed by a private party under Section 15 of the Contempt of Courts Act, without a prayer for taking suo motu action of contempt, was held to be not maintainable.

10. Mr. Jethmalani urged that the power vested in the High Courts and the Supreme Court under the Contempt of Courts Act, 1971, was a regulatory measure imposing a fetter on a citizen's fundamental right to freedom of speech and would have to be invoked and exercised with utmost caution so as not to infringe upon such fundamental right. Any deviation from the prescribed Rules should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt.

11. Mr. Shanti Bhushan, learned Senior Advocate, who appeared for Respondent No.2, while reiterating the submissions made by Mr. Ram Jethmalani, laid special stress on the decision in Duda's case (supra) and reiterated the directions given in such case to the effect that the application made by the Amicus Curiae could have been placed only before the Chief Justice in Chambers on the administrative side and not on the judicial side. Mr. Shanti Bhushan submitted that in matters such as this, the reputation of the Court had to be considered and in view of the deviation from the normal procedure, which was meant to be strictly adhered to, the contempt proceedings and notice issued on the aforesaid application, were liable to be dropped.

12. We have given our careful consideration to the submissions made by Mr. Jethmalani and Mr. Shanti Bhushan, learned Senior Advocates, regarding the maintainability of the contempt proceeding, but we are not inclined to accept the same.

13. The learned Amicus Curiae, Mr. Harish Salve, filed an application in an ongoing proceeding to bring to the knowledge of the Hon'ble Chief Justice of India certain statements made by the Respondent No.1 in an interview given to the Tehelka magazine deliberately aimed at tarnishing the image of the judiciary as a whole, and, in particular, a sitting Judge of the Supreme Court, in the eyes of the general public without any foundation or basis therefore. By publishing the said interview, the Respondent No.2 was also responsible for lowering the dignity of this Court in the eyes of all stake holders in the justice delivery system. Prima facie, a case for issuance of notice having been made out, the Hon'ble Chief Justice of India directed issuance of notice to the Respondents to show cause in regard to the allegations contained in the application filed by the learned Amicus Curiae. The error committed by the Registry of the Supreme Court in placing the matter on the judicial side instead of placing the same before the Hon'ble Chief Justice of India on the administrative side, is an administrative lapse which does not reduce the gravity of the allegations. Even in Duda's case (supra) and more explicitly in Bal Thackrey's case, it has been indicated by this Court that it could have taken suo motu cognizance, had the petitioners prayed for it, even without the consent of the Attorney General, but that such a recourse should be confined to rare occasions only.

14. The matter may require further consideration, but we are not inclined to hold that the contempt proceedings are not maintainable for the above- mentioned reasons. Primarily, certain information was brought to the notice of the Chief Justice of India on which action was taken. In other words, notwithstanding the prayer in the application made by the learned Amicus Curiae, the Chief Justice of India took cognizance and directed notice to issue thereupon. The issues involved in these proceedings have far greater ramifications and impact on the administration of justice and the justice delivery system and the credibility of the Supreme Court in the eyes of the general public than what was under consideration in either Duda's case or Bal Thackrey's case (supra). In our view, even though suo motu cognizance was taken in this case, this is one of those rare cases where, even if the cognizance is deemed to have been taken in terms of Rule 3 (c) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, without the consent of the Attorney General or the Solicitor General, the proceedings must be held to be maintainable.

15. Thus, on prima facie satisfaction that there were sufficient grounds for taking action on its own motion, the Court initiated suo motu action by directing issue of notice to the Respondents. Hence, the present contempt proceeding was initiated by the Court on its own motion and it is not covered by clauses (a), (b) and (c) of sub- section (1) of Section 15 of the Contempt of courts Act, 1971 or clauses (b) and (c) of Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975. On the other hand, the present proceeding is covered by clause (a) of rule 3 of the said Rules. Merely because the

information regarding the allegedly contemptuous statements made by Respondent No.1 and published by Respondent No.2 was furnished to the Court by the learned Amicus Curiae, the proceeding cannot lose its nature or character as a suo motu proceeding. The learned Amicus Curiae was entitled to place the information in his possession before the court and request the court to take action. The petition filed by him constituted nothing more than a mode of laying the relevant information before the court for such action as the court may deem fit. No proceedings can commence until and unless the court considers the information before it and decides to initiate proceedings. If the court considers the information placed before it and initiates proceedings by directing notice to issue to the alleged contemnors the action taken comes within the ambit of Rule 3(a) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975.

16. Hence, the objections raised by the Respondents against the maintainability of the present proceedings are without any basis.

17. We, therefore, hold these proceedings to be maintainable and direct that the matter be placed for hearing on merits. The respondents will be entitled to file further affidavits in the matter within eight weeks from date. Thereafter, notwithstanding the provisions of Rule 9 of the 1975 Rules, let the matter be placed for hearing on merits on the available papers and affidavits on 10th November, 2010.

¹(1988) 3 SCC 167

²(2005) 1 SCC 254