SUPREME COURT OF INDIA

Vitusah Oberoi & Ors.

Vs.

Court of Its Own Motion

Crl.A.No.1234 of 2007

(T.S.Thakur,CJI., A.M.Khanwilkar,J.,)

02.01.2017

JUDGMENT

T.S.Thakur, CJI.,

1. In these appeals, the appellants call in question the correctness of an order dated 11th September, 2007 passed by a Division Bench of the High Court of Delhi whereby the appellants have been found guilty of contempt and directed to remain present in person before the High Court for being heard on the quantum of sentence to be awarded to them.
Facts necessary for appreciating the challenge mounted by the appellants may be summarized as under:

2. Appellants No.1 and 2 are the Editor and City Editor respectively of Mid Day, an English Daily Newspaper, with a large circulation in the National Capital Region. Appellant No.3 happens to be the Printer and Publisher of the papers while appellant No.4 is a Cartoonist working for the said paper. The genesis of the suo motu contempt proceedings initiated by the High Court of Delhi lies in a story that appeared in 'Mid Day' in its issue dated 2nd May, 2007 under the title "Injustice". The substance of the publication brought to light the alleged misuse of the official residence of Justice Sabharwal who demitted office as Chief Justice of India on 13th January, 2007, by the same being shown as the registered office of three companies promoted by Justice Sabharwal's sons. A second story published on 18th May, 2007 in Mid Day pointed out that Justice Sabharwal's son had entered into a partnership with shopping malls and commercial complex developers just before Justice Sabharwal passed orders for sealing of commercial establishments running in residential areas in different parts of Delhi. This, according to the story, benefitted the partnership business of Justice Sabharwal's sons. On 19th May, 2007 came a third story that quoted some senior lawyer's saying that if the facts about Justice Sabharwal's sons' partnership business benefitting from the orders of Justice Sabharwal's Bench were true, then Justice Sabharwal should not have heard the case. The paper also carried in the same issue a cartoon by Mohd. Irfan Khan, appellant No.4 showing as if Justice Sabharwal's family had benefitted from the orders passed by Justice Sabharwal's Bench.

3. It was in the above backdrop that Shri R.K. Anand, an advocate practicing in Delhi High Court appears to have placed a copy of the newspaper dated 18th May, 2007 before a Division Bench of the High Court of Delhi on 21st May, 2007 to draw the attention of the Court about the article published in the said paper maligning the former Chief Justice of India and tending to lower the image of the judiciary in the eyes of the common man. Prima facie satisfied that the news item was objectionable and tended to lower the image of judiciary in the eyes of the common man, the High Court initiated suo-motu contempt proceedings and issued show cause notices to appellants No.1 to 3. On 25th May, 2007 Shri Anand appears to have filed another copy of Mid Day newspaper dated 19th May, 2007 before the High Court which carried the cartoon drawn by the appellant No.4, the paper's cartoonist. The High Court found the same also to be objectionable and issued notice even to appellant No.4 to show cause why contempt proceedings may not be initiated against him.

4. In response to the notices served upon them, the appellants filed their objections supported by affidavits. In the affidavit filed by appellant No.1-Editor of Mid-day it was, inter alia, stated that all the facts published in the paper were supported by unimpeachable documents and were true. A supplementary affidavit filed on behalf of the appellant No.1 gave some more details about a company promoted by Justice Sabharwal's sons and the documents relevant thereto. An affidavit sworn by appellant No.4, the cartoonist was also filed explaining his position. This was followed by additional affidavits filed by the appellants on 21st August, 2007 in which the appellants tried to justify their publications on the ground that the said publications were intended to bring to light an impropriety committed only by Justice Y.K. Sabharwal and that the same was not intended either to malign or undermine the judiciary in this country or any other Judge in the Supreme Court of India or any other Court for that matter. The affidavits in particular stated:

> "The Article which was published was intended to bring to light such impropriety by Mr. Y.K. Sabharwal and was not intended at all to undermine or malign the Judiciary of India or any other Judge of the Hon'ble Supreme Court of India or of may other court in India. If our articles created any impression on anyone that we were or were intending to malign the judiciary or any other Judge, we sincerely apologise for the same."
>
> I most respectfully submit that I have the utmost regard and respect for the majesty of law and the Court of law. The Article in question published by Mid Day was not intended to undermine the authority of law or lower the image of judiciary or with any intention of interfering with the administration of Justice."

5. The explanation offered by the appellants notwithstanding the High Court has by the order impugned in these appeals found the appellants guilty of contempt and directed them to remain present in person for being heard on the question of quantum of sentence that may be awarded to them. The present appeal assails the correctness of the said order.

6. Appearing for the appellants M/s. Shanti Bhushan and Prashant Bhushan raised a short point in support of the appeal. They contended that the High Court could under Article 215

of the Constitution of India no doubt initiate proceedings and punish for its own contempt, but it could not, according to the learned counsel, initiate proceedings or punish for the contempt of the Supreme Court. It was urged that even under Section 10 of the Contempt of Courts Act, 1971, the High Court could punish only for its own contempt or the contempt of a Court subordinate to it. There was no provision, argued the learned counsel, either in the Constitution of India or in the Contempt of Courts Act, 1971 that empowered the High Court to take cognizance of the contempt of a superior Court like the Supreme Court of India. Inasmuch as the High Court had failed to appreciate the scope of the powers of contempt exercisable by it, it had fallen in palpable error that required to be corrected. It was contended that while the appellants had pleaded truth as a defense to the charge of contempt yet regardless whether the publication could be justified on the ground of truth under Section 30(b) of the Act, the impugned order passed by the High Court was liable to be set aside.

7. The genesis of the suo motu proceedings initiated by the High Court, as noticed earlier, lay in the publication of the articles, stories and write ups questioning the propriety of certain orders passed by a two-Judge bench of this Court of which Justice Y.K. Sabharwal was the Presiding Judge. The substance of the offending publication was that Justice Sabharwal had by reason of the orders passed by the bench benefitted the partnership business of his sons in real estate development in and around Delhi. The text and the context of the said publications was focused entirely on the question whether Justice Sabharwal should have heard the matters and passed sealing orders of commercial properties in residential areas of Delhi which orders were perceived to be beneficial to the real estate business of his sons. What is, therefore, undeniable is that the publications were actually seen as contemptuous vis-a-vis the Supreme Court. No part of the publications referred to the High Court of Delhi or any other High Court for that matter. The publications did not refer to any Judge or any order of any Court subordinate to the High Court of Delhi. Initiation of proceedings by the High Court in such circumstances was, it is evident, meant to vindicate the Supreme Court more than the High Court who initiated those proceedings. The question is whether the High Court could do so. The appellants argued and, in our opinion, rightly so that the Supreme Court was and is competent to punish for contempt of itself. This is evident from Article 129 of the Constitution which reads as under :

> "Article 129 129. Supreme Court to be a court of record: The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

8. So also Article 215 of the Constitution empowers the High Court to punish for its contempt. That provision reads:

> “High Courts to be courts of record: Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

9. The provisions of Section 10 of the Contempt of Courts Act, 1971 also empower the High Court to punish for its own contempt or the contempt of Courts subordinate to it. Section 10 reads:

> " 10. Power of High Court to punish contempts of subordinate courts.−Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempts of itself: Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

10. There is, from a plain reading of the above, nothing in the Contempt of Courts Act, 1971 or in Article 215 of the Constitution which can be said to empower the High Court to initiate proceedings suo-motu or otherwise for the contempt of a superior Court like the Supreme Court of India. As a matter of fact, the Supreme Court under Article 129 and High Court under Article 215 of the Constitution are both declared to be Courts of Record. One of the recognised attributes of a court of record is the power to punish for its contempt and the contempt of courts subordinate to it. That is precisely why Articles 129 and 215, while declaring the Supreme Court and the High Courts as Courts of Record, recognise the power vested in them to punish for their own contempt. The use of the expression "including" in the said provisions is explanatory in character. It signifies that the Supreme Court and the High Courts shall, as Courts of Records, exercise all such powers as are otherwise available to them including the power to punish for their own contempt. Whether or not the power to punish for contempt of a subordinate court was an attribute of a court of record fell for consideration of this Court in *Delhi Judicial Service Association vs. State of Gujarat*[1]. The argument there was that the Supreme Court could not initiate contempt proceedings based on an incident that working in the State of Gujarat. That contention was examined and rejected by this Court. It was held that the language employed in Article 129 indicated that the Supreme Court is a Court of Record and was entitled not only to punish for its own contempt but to do all that which is within the powers of a Court of Record. This Court held that since the Constitution has designed the Supreme Court as a Court of Record, Article 129 thereof recognises the existing inherent power of a Court of Record in its full plenitude including the power to punish for its own contempt and the contempt of its subordinate. The Court said:

> "29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself (emphasis supplied). The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression "including the power to punish for contempt of itself." The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating

to contempt as would appear from the expression "including." The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of the Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since, the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the Article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very back bone of administration of justice. The subordinate courts administer justice at the grass root level, their protection is necessary to preserve the confidence of people in the efficacy of Courts and to ensure unsullied flow of justice at its base level."

11. The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court's power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside.

12. We, accordingly, allow these appeals, set aside the judgment of the High Court and discharge the rule issued by the High Court. The parties to bear their own cost.

Judgment Referred.

[1]*(1991) 4 SCC 0406*