

SUPREME COURT OF INDIA

Transparency International India

Vs.

State of Jammu & Kashmir

WP(CrI.)No.180 of 2006

(Jagdish Singh Khehar,CJI., D.Y.Chandrachud and Sanjay Kishan Kaul,JJ.,)

21.02.2017

JUDGMENT

Jagdish Singh Khehar,CJI.,

1. The instant writ petition has been filed by two petitioners, Transparency International India and Centre for Media Studies. The cause for the petitioners, to approach this Court, seems to emerge from a study, described as "India Corruption Study to improve Governance", conducted by Centre for Media Study, and published by Transparency International India. It was sought to be repeatedly highlighted, that the above research program taken on hand by Centre for Media Studies, was a general study on governance, predominantly with reference to the bureaucracy, and the functioning of the administrative machinery. Yet it was acknowledged, that there were references to the functioning of the judiciary, as well.

2. Even though, the above study was conducted independently, with reference to each State, yet the relevant study, which has brought the petitioners of the instant writ petition to this Court, pertains to the State of Jammu and Kashmir, and is limited to the findings recorded therein, with reference only to the lower judiciary. For the aforesaid purpose, learned counsel for the petitioners invited our attention to Table No.2.1: Jammu and Kashmir-Ranking of Public Services, the extract whereof, which is relevant to the subject of the present controversy, is extracted hereunder:

"Table No.2.1: Jammu & Kashmir-Ranking of Public Services

Department Judiciary (Lower)	Direct experience of bribing	Quality of service is poor	Using influence/ middlemen	Perception that department is corrupt	Lack of Commitment to reduce corruption	Perception increased	Composite Index Value
NEED BASED							

	96	81	09	92	88	86	87
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A perusal of the table extracted above reveals, that the compilation of the views of those who were asked (to express their views) led to the inference, that 92% of the lower judiciary in the State of Jammu and Kashmir, was perceived to be corrupt.

3. It is also relevant to refer to Table 2.2: (Estimated No. of Households Paid Bribes), wherein, with reference to the lower judiciary in the State of Jammu and Kashmir, the study incorporated, the following data/information:

"Table No.2.2 : Estimated No. of Households Paid Bribes

Department	No. of Households Paid Bribes
Judiciary (Lower)	223267

A perusal of the table extracted above reveals, that 2,23,267 cases of actual bribe giving were disclosed, with reference to the lower judiciary, in the State of Jammu and Kashmir.

4. Based on the findings recorded, with reference to the lower judiciary in the State of Jammu and Kashmir, the Court of Judicial Magistrate, 1st Class, Kangan, Jammu & Kashmir, on 4.5.2006 initiated action against five individuals/parties, details whereof are extracted hereunder :

1. P.N. Razdan, author of Op. Ed. Page - Corruption in J&K - here, there and Everywhere - I & II, C/o Greater Kashmir
2. Fayaz Ahmed Kaloo, editor Printer & Publisher, GK 14/B Sanat Nagar, Srinagar/6 Pratap Park, Residency Road
3. Zahir-ud-In - Executive Editor Greater Kashmir
4. Centre for Media Studies New Delhi through its Director/Secretary C/o GK
5. Transparency International through Chief Executive Officer C/o GK (non-applicant/respondents)"

It is therefore apparent, that the Centre for Media Studies (Petitioner No.2, before this Court), was issued notice at serial No.4, and Transparency International (Petitioner No.1, herein) was issued notice at serial No.5.

5. The text of the order dated 4 th May, 2006, is also reproduced hereinbelow:

"Order
4th May 06

Whereas Greater Kashmir, Newspapers daily, printed and published by non-applicant No.2 as edited by non-applicant No.3 has published an article in Op.-Ed at page 7 filled Corruption in J&K - here, there and everywhere - I & II authorized by non-applicant No.1, based on certain references to non-applicants 4 & 5 in the paper dated 3 rd and 4th May, 2006. Whereas the subtitle of the article in bold front depicts, ' Lower Judiciary ' and further in Column 2, line 45 and col.3 line 8 - wherein the author refers, "Kashmir viewed as the most corrupt, Lower Judiciary (86%) referred to as govt. – sucking Also and in article Part II - published on 4th May 06 col.1 and 2 last line (Col.1) and first seven lines in col.2 which are reproduced herein below. "A strong and honest head of the unit or department, who is easily amenable to the public, has powers to take drastic action against the delinquent officials, and has a political interference, is sure to deliver results".

Whereas such publication is libelous in nature, where such sweeping reference towards the judiciary is general and subordinate judiciary (lower) as mentioned in the article in particular, thereby not only scandalizing the whole system of administration of justice, but also defaming the public servants (member of subordinate judicial services) who are employed in connection with administration of justice and thereby lowering down the image of judiciary as a whole and tends to scandalize and lower down the image of judiciary as a whole undermining the authority of courts (esp. lower courts) and shaking the confidence of general public and prejudicing the due course of justice. Whereas such generic remarks cast reflections on the very conduct of subordinate judiciary and even sight upto their administrative heads as given in part II, creating doubts about the integrity of functioning of the Department as a whole. Whereas in the opinion of this court, this flagrant statement has not only lowered down the image of judiciary and is direct interference into the administration of justice and callous and irresponsible behaviour on the part of respondents. Therefore by virtue of this show cause notice you are hereby called upon to explain your position, within a period of 15 days from the issuance of this notice as to why action as warranted under law be not initiated against you. Issued under my hand and seal of this court, today this 4 th May, 06."

(emphasis is ours)

6. A perusal of the order dated 4.5.2006, according to the learned counsel for the respondent, makes it abundantly clear, that the same is in the nature of a ' show cause notice ' , calling for the explanation of the noticees. This position, in our view, merits acceptance. It is also relevant to mention, that the order dated 4.5.2006 also brought out, that the same was being passed under the provisions of the Contempt of Courts Act, 1997, and/or Section 2/6 read with Sections 499, 500/501 of the Ranbir Penal Code. It is in the above perspective, that we will examine the submissions of the rival counsel, while adjudicating upon the controversy in hand.

7. Thereafter (after the issuance of the notice extracted above, dated 4th May, 2006), it was pointed out on behalf of the petitioners, that further notices dated 16.2.2006 and 1.7.2006, were also issued, for the same purpose. The notice dated 1.07.06, categorically expressed, "...Now again you are being issued notice to cause your appearance or through your authorized representative to answer all material questions as to why cognizance as taken above be not proceeded against you on or before next date of hearing ..." It is therefore apparent, that the personal presence of the petitioners (or others, to whom the above notices were issued) was not sought.

8. The pleadings in the instant writ petition, more particularly paragraph 6 thereof, acknowledge that, Transparency International India (-Petitioner No.1 herein), received the show cause notice on 7.7.2006, and Centre for Media Studies (-Petitioner No.2 herein), received the same on 16.6.2006. Having received the aforesaid notices, the following response was addressed by the Centre for Media Studies (-Petitioner No.2), to the Judicial Magistrate, Class-I, Kangan, Jammu & Kashmir, on 23.6.2006. The same is extracted below:

"RESEARCH HOUSE
Saket Community Centre
New Delhi-110017

"23 June 2006

To

Judicial Magistrate 1st Class Kangan,
J&K

Ref: You notice of 16/06/2006, No.101/MK Contempt of Courts Act - 1997, Sec.216 read with Section 499, 500/501 RPC.

Sir,

Although the Order dated 16 June 2006 mentioned that "a copy of the complaint it enclosed", a copy of the complaint has not been enclosed. Instead, a copy of the Order dated 4th May, 2006 directing show cause notice to be issued and posting the case to 19 May 2006 was enclosed. The Order dated 4th May 2006 was not served on us till today. A copy of the letter is received along with Order dated 16 June 2006. Therefore, we had no opportunity to respond to the notice dated 4 May 2006. This letter may be treated as response to the show cause notice directed to be issued on 4th May, 2006. Without a copy of the complaint and a copy of the article entitled Corruption in Jammu & Kashmir here, there and everywhere - I & II by Mr. F.N. Razdan as published in Greater Kashmir being made available to us, it is not possible for us to reply to the show cause notice or to assist the Hon' ble Court of Judicial Magistrate Class-1st, Kangan in this case. We, therefore request that these crucial

documents which are absolutely essential to be supplied to us. Only after seeing the said article which is the basis of the complaint we will be able to explain the reference allegedly made there in to the Centre for Media Studies. At this point of time we can only say that we are not a party to the said article and we have no role in the writing or publication of the said article. We have no connection either with the author of the article or the publication of the said article. We have no connection either with the author of the article or the publisher or the editor of the newspaper concerned. Nevertheless, we would like to state that CMS has been undertaking for more than a couple of years national surveys on corruption involving ordinary citizen in various public services/utilities. In this exercise eminent experts on the subjects covered in the study are being consulted. More specifically, Chief Central Vigilance Commissioner, Vigilance Commissioners, Justice Rajinder Sachhar (former Chief Justice of Delhi High Court), Shri Prashant Bhushan, for example, and such other outstanding national personalities have been consulted at one point or other in the process of designing and conducting these surveys on corruption and common citizen. They are all familiar with the survey findings and the reports published by Transparency International India some months ago. J & K was included in the India Corruption Survey of 2005 conducted by CMS in collaboration with Transparency International India and its President Admiral R.H. Tahiliani. The then Vigilance Commissioner of J & K (Shri Radhavinod Raju, IPS) visited CMS in New Delhi for discussions and was aware of the survey both before conducting, during the time of the survey in J & K, and after the publication of the report in this context.

The said study covers 19 other States of India. CMS has been appreciated for its pioneering work in this regard and many, including senior officials of the States, have thanked us for the study. The study findings were published by internationally reputed Transparency International India and its Chairman Admiral R.H. Tahiliani took personal interest with a hope that seriousness is imparted into public debate on critical issues before the Nation with more reliable field data. Further as concerned citizens to India, we are as much sincerely concerned and interested in upholding the status and role of Judiciary in the country. In fact, the Chairman of CMS had closely worked in the last decade with two former Chief Justices of India - Justice P.N. Bhagawati and Justice R.S. Pathak. Our Chairman was the national Convener while they were the Chairpersons of Social Audit Panels constituted by Ministry of Communication and Ministry of Environment and Forests, respectively. There was never any intention at all on our part to scandalize or lower the authority of the judiciary much less interface with the due course of justice or obstruct the administration of justice in any manner. We pray that in view of the facts stated above, the Order directing appearance on July 1st, 2016 may be recalled and the case closed as against us.

Thanking you,
Sincerely
For Centre for Media Studies"
(emphasis is ours)

9. A separate response dated 7.7.2016, was also addressed on behalf of Transparency International India (-Petitioner No.1, herein) to the Judicial Magistrate, 1st Class, Kangan. Since the response runs into several pages, for reasons of brevity, we shall extract hereunder, only a relevant portion thereof :

"However, without any prejudice, we would like to make the following submissions : We are aware that subordinate courts do not have the power of contempt under the Contempt of Courts Act. They can at most make a reference to the High Court and the High Court can then, take a decision on the matter. We presume that your notice is only to enable you to decide whether to make a reference to the High Court to commence contempt proceedings.

3. We presume that our response is to enable the above and not to directly commence contempt proceedings at this stage.

4. We now enclose a reply to this notice as to why action may not be initiated against us on the charges of contempt, libel and defamation."

(emphasis is ours)

10. A perusal of the extracts from the responses, reproduced above, would reveal, that the petitioners did not object to the initiation of the show cause proceedings. It is necessary to notice, that the petitioners informed the Judicial Magistrate, 1st Class, Kangan, that while it was open to the Magistrate to make a reference to the High Court, under the Contempt of Courts Act, the Magistrate had no right to suo moto initiate proceedings, under the Contempt of Courts Act. Besides recording the above submissions in its reply, Transparency International India also highlighted the fact, that it had not seen the newspaper article, which constituted the basis, for the show cause. It also expressly asserted, that Petitioner No.1 had no connection with the author/publisher/editor of the newspaper-Greater Kashmir. The reply, also gave out, the functions/activities and the credentials of the Transparency International India. Be that as it may, it needs to be noticed, that in its response Transparency International India, in the reference to the said letter, as also, in the contents thereof acknowledged, that the proceedings had been initiated under the Jammu & Kashmir Contempt of Courts Act, 1997 and/or Section 2(d) read with Sections 499, 500/501 of the Ranbir Penal Code.

11. It seems, that having responded to the notices received from the Court of Judicial Magistrate, 1st Class, Kangan (through their communications, referred to above), the petitioners felt satisfied, that no further response was called for on their behalf. And therefore, despite having been required to enter appearance before the Judicial Magistrate, 1st Class, Kangan, vide orders dated 16.6.2006 and 1.7.2006, the petitioners chose not to appear before the concerned Court. Consequent upon the non-appearance of the petitioners before the Judicial Magistrate, the impugned order dated 24.8.2006 came to be passed. The text of the above order is reproduced below:

"Whereas a Robkar titled above is pending before this Court and the attendance of the said non-applicant is required. As such you are asked to arrest the said person and produce him before this court on 27.9.06. In case the said person furnish the bail bond of Rs.15,000/- and the surety of like amount, he shall be released."

(emphasis is ours)

A perusal of the above order reveals, that even though the respondents had been summoned to the Court, they had not entered appearance, and therefore, their attendance was being procured throughailable warrants.

12. Learned counsel for the petitioners, in his effort to assail the above order dated 24.8.2006, vehemently contended, that the Judicial Magistrate, 1st Class, Kangan, seems to have taken upon himself, the jurisdiction vested in a High Court under the Contempt of Courts Act. It was submitted, that the Judicial Magistrate, 1st Class, Kangan, had no authority to direct the attendance or the presence of the petitioners, under contempt proceedings. It was submitted, that the impugned order extracted above, was clearly beyond the jurisdiction of the Judicial Magistrate. It was pointed out, that when the matter was listed before this Court for hearing, on the first occasion itself, on 20.9.2006, this Court stayed the operation of the order dated 24.8.2006, till further orders. It was pointedly asserted, that this Court must have been clearly conscious, of the abuse of jurisdiction of contempt proceedings, at the hands of the Judicial Magistrate, and accordingly, in its motion Bench order dated 20.9.2006, this Court, not only stayed the execution of the warrants of arrest (issued against the Chairman, Transparency International India, and the Director, Centre for Media Studies), but also stayed further proceedings in the matter(pending, before the Concerned Magistrate).

13. In continuation of the position expressed above, it was the contention of the learned counsel for the petitioners, that under the Jammu & Kashmir Contempt of Courts Act, 1997, the jurisdiction to initiate contempt proceedings is only vested with the High Court. For this, reference has been made to Section 10 thereof, which is reproduced below:

"10. Power of the High Court to punish contempts of subordinate courts:- The High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempt's itself : Provided that the High Court shall not 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 Ranbir Penal Code, Samvat 1989."

(emphasis is ours)

Based on the mandate of Section 10 extracted above, it was submitted, that even when contempt was alleged to have been committed against a subordinate court, only the

jurisdictional High Court and not the subordinate court (against which the contempt is alleged to have been committed) had jurisdiction to initiate contempt proceedings.

14. Furthermore, even though it was acknowledged, that cognizance of criminal contempt could have been taken, at the instance of a subordinate court, it was submitted, that only the High Court had the authority to initiate action in the matter. For this, reference was made to Section 15 of the 1997 Act, which is reproduced below:

"15. Cognizance of criminal contempt in other cases :- (1) In the case of criminal contempt, other than a contempt referred in section 14, the High Court may take action on its own motion or of a motion made by –

(a) the Advocate General; or

(b) any other person, with the consent in writing of the Advocate General.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is allegedly to be guilty. Explanation.- In this section, the expression "Advocate General" means the Advocate General of the State."

(emphasis is ours)

Based on Section 15 extracted above, it was submitted, that only that subordinate court, against which criminal contempt is alleged to have been committed, can make a reference, about the same to the jurisdictional High Court. Relying on sub-section (2) of Section 15, it was sought to be explained, that it was only the court, of which contempt has been committed, and which was having intrinsic knowledge thereof, was authorized to make such reference, and not just any court.

15. It was submitted, that the extract from the report of the Centre for Media Studies, which was sought to be published by Transparency International India, was a general report, based on a study. And that, the report was not aimed at a particular court, and as such, it was not open to the Judicial Magistrate, 1st Class, Kangan, in any case, even to make such a reference to the High Court, within the meaning of Section 15 of the 1997 Act.

16. It was also the contention of the learned counsel for the petitioners, that in the absence of the petitioners, the Judicial Magistrate, Kangan, ought to have proceeded in accordance with law, after taking into consideration the response submitted by the petitioners. In this behalf it was asserted, that the response of the petitioners, to the notice issued to them, ought to have been considered, and further proceedings ought to have been dropped, as the petitioners could not be held to be blameworthy, of the newspaper reporting.

17. We have given our thoughtful consideration to the submissions advanced at the hands of learned counsel for the petitioners. We have also heard learned counsel for the State of Jammu & Kashmir, who has generally supported the cause, and the different orders, passed by the Judicial Magistrate, 1st Class, Kangan.

18. We would first like to deal with one of the submissions of learned counsel for the petitioners, based on Section 15 of the 1997 Act. It was contended, that a reference could be made only by the particular court, of which contempt was allegedly committed, and not by just any court. And that, only the said particular court, could make a reference to the High Court, to initiate contempt proceedings. It is not possible for us to accept the submission of the learned counsel for the petitioners, at least, in the facts and circumstances of the case in hand. In our considered view, in the sense that the above contention has been advanced, it would not be open to any Member of the lower judiciary, to make a reference to a High Court, wherein general allegations have been levelled. The publication of the article in the newspaper - Greater Kashmir, wherein, only general allegations have been levelled, according to learned counsel for the petitioners, cannot be the basis of any action. It was highlighted, on the basis of the compilation of Centre for Media Studies (Petitioner No.2), and publication of the compilation effectuated by Transparency International India (Petitioner No.1), that 92% of the lower judiciary in the State of Jammu and Kashmir, was perceived to be corrupt, and there were actual figures of 2,23,267 cases, where bribe was actually given. But there were no allegations aimed at any individual Judge or Court. Only because the above allegations were not aimed at any particular Court, the provisions of the 1997 Act could not be invoked. It is not possible for us to accept the above contention. We may clarify, that the term "of a subordinate court", used in Section 15(2) of the 1997 Act - could well contemplate a situation, where the alleged contemptuous action is aimed at more than one court, or a large number of courts, all at once. In that eventuality, in our considered view, any one of such courts, can make a reference to the High Court, under the provisions of the Jammu & Kashmir Contempt of Courts Act, 1997. In view of the above, we may be deemed to have concluded, that where the contemptuous action is of a general nature, and is not aimed at specific Judges or Courts, any one of such Judges or Courts, which perceives that the same is aimed at him (or it), would be well within its right, to make a reference of the same to the jurisdictional High court. And thereupon, whether cognizance and initiation of contempt proceedings need to be taken, would fall within the realm of the High Court itself.

19. We are, however, satisfied in accepting, that the Judicial Magistrate, Kangan, had absolutely no jurisdiction or authority to pass the impugned order dated 24.8.2006, whereby, it contemplated to enforce the attendance of the petitioners (amongst others), by way of arrest. We are Also of the view, that in a case as the one in hand, the petitioners had perceived, that the proceedings initiated by the Judicial Magistrate on 4.5.2006, were misconceived. And accordingly, in their written submissions, it was acknowledged "...We presume that your notice is only to enable you to decide whether to make a reference to the High Court to commence contempt proceedings... We presume that our response is to enable the above and not to directly commence contempt proceedings at this stage..." Having received the aforesaid response from the petitioners, and the petitioners having not entered appearance before the Judicial Magistrate, the Judicial Magistrate ought to have

proceeded further with the matter, in consonance with law. And if it was the Court's understanding, that the matter needed to be taken further, either under the Contempt of Courts Act, 1997 and/or under Section 2/6 read with Sections 499, 500/501 of the Ranbir Penal Code, the Court ought to have done so.

20. In view of the above, while disposing of the instant petition, we direct the present Judicial Magistrate, 1st Class, Kangan (the judicial officer holding the charge of the Court of the Judicial Magistrate, 1st Class, Kangan) to proceed with the matter in furtherance of the original show cause notice dated 4.5.2006. It shall be open to the petitioners to enter their appearance before the Judicial Magistrate, 1st Class (either in person or through their counsel). In case the petitioners do not enter appearance before the Judicial Magistrate, he may pass such an order, as he considers appropriate, in consonance with law. Needless to mention, that it would be open to the petitioners to assail the same, in case they are aggrieved thereof. The order dated 24.8.2006 is quashed and set aside.

21. During the course of hearing, learned counsel for the petitioners also placed reliance on Section 199-B of the Code of Criminal Procedure, 1989, as is applicable to the State of Jammu & Kashmir, to contend that, it would not be open to the Magistrate concerned to initiate proceedings under Section 2/6 read with Sections 499, 500/501 of the Ranbir Penal Code. We record the contention of the learned counsel for the petitioners, and in case the concerned Judicial Magistrate desires to proceed under the aforesaid provisions of the Ranbir Penal Code, the Court shall take due notice of the submissions advanced by the petitioners under Section 199-B of the Code of Criminal Procedure, 1973.

22. After the order was dictated, learned counsel for the petitioners informed us, that Admiral R.H. Tahiliani, to whom the notices dated 16.6.2006 and 1.7.2006 were issued, has since passed away, and as such, proceedings initiated against him, would stand abated. We find force in the contention advanced at the hands of learned counsel for the petitioners. The proceedings initiated against Admiral R.H. Tahiliani, shall be deemed to have abated.

23. The writ petition is disposed of in the above terms. Consequent upon the disposal of the main petition, all the pending applications, shall also stand disposed of.