

SUPREME COURT OF INDIA

Seema Sapra

Vs.

Court On Its Own Motion

CrI.A.No.1238 of 2019

(A.M.Khanwilkar and Ajay Rastogi, JJ.,)

14.08.2019

ORDER

1. The instant criminal appeal has been preferred under 19(1) of the Contempt of Courts Act, 1971 assailing the judgment of the High Court of Delhi dated 17th December, 2015 holding the appellant guilty of having committed contempt of Court and imposing punishment of imprisonment for a period of one month and a fine of Rs.2,000/- (Rupees Two Thousand Only) to be deposited within a period of three months from the date of the order, failing which undergo a further term of imprisonment of one month with a further direction restraining the appellant to argue as an advocate or in-person, except in her defence, before any Bench of the High Court of Delhi or any Court or Tribunal subordinate to the High Court of Delhi for a period of two years from the date of passing of the impugned judgment dated 17th December, 2015.

2. The appellant had been exempted from surrendering vide order of the Chamber Judge dated 9th October, 2017. Notice was issued on the applications as well as on the appeal vide order dated 26th March, 2018, which has been duly served.

3. We have heard the parties. During the course of hearing, the appellant-in-person made an oral request that this Bench ought to recuse from hearing the matter which fact has been noted in our order dated 11th April, 2019 while reserving the order. The same reads thus:

“We have heard the petitioner in-person. She is at liberty to file additional documents, which were referred to during the course of argument or any further document(s) which she intends to file. She prays for four weeks’ time to do so. Appropriate order will be passed after the additional document(s) are filed. After hearing the petitioner in-person for almost two hours and this order being dictated, the petitioner submits that this Bench should not hear these matters. Even this submission will be considered in the order that we may pass after considering the document(s).

Orders reserved.”

4. Instead of filing additional documents in terms of the liberty given to the appellant in the aforementioned order, she moved an I. A. No.62789 of 2019 in Writ Petition (C) No.13 of 2018 on 12th April, 2019. We will take it up for consideration while dealing with the main writ petition in which the same has been filed. For the present, suffice to point out that one of the reliefs claimed in the said application is that the cases be listed before a Bench not comprising of one of us (A.M. Khanwilkar, J.). The appellant, however, mentioned the matter on 6th May, 2019 to inform the Court about filing of the said application. Since the mentioning was done before a different Bench, the application could not be taken up for hearing and was directed to be listed on 2nd July, 2019. Again, on 2nd July, 2019, the cases were listed before a different Bench and not the same combination which had heard the matters on 11th April, 2019. It was, therefore, ordered that the cases be listed before the same Bench which had heard the matter on 11th April, 2019 and reserved order therein. Accordingly, the cases were listed on 12th July, 2019 before the specially constituted Bench. After hearing the appellant-in- person, the Court passed the following order:

“We have heard the petitioner-in-person on the applications for issue of appropriate directions/order and for modification of previous Court order, for over one hour. After hearing the petitioner-in-person for quite some time, we asked her to confine her arguments to the issues which may require our consideration. She submitted that one of us (A. M. Khanwilkar, J.) should recuse. For that, she invited our attention to the averment made in I.A. No.62789 of 2019 in particular. Such request cannot be accepted merely for asking by the petitioner-in-person. Reasons for not accepting that prayer will be elaborated in the order to be passed as noted in our previous order dated 11.04.2019. It is open to the petitioner to file list of dates and/or any other relevant document(s), if she so desires. That be filed within two weeks. We reiterate that all aspects will be considered and appropriate orders passed on the concerned proceedings, to be pronounced later.”

5. We must, at the outset, deal with the gravamen of the apprehension of the appellant as to why she has insisted for recusal of one of us (A.M. Khanwilkar, J.). Even on a liberal reading of the averments in the stated application, the apprehension of the appellant is founded on the allegation that she may not get justice from the Bench as Justice A.M. Khanwilkar is well acquainted with the Advocates who incidentally are members of the Supreme Court Bar Association against whom personal allegations have been made by her in the accompanying writ petition.

6. We must usefully refer to Court On Its Own Motion Vs. State (paragraph 28), in which it has been observed as follows:

“The path of recluse is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favor affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of

bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”

It is also pertinent to remind ourselves of the dictum of Lord Denning who observed in *R. Vs. Metropolitan Police Commissioner ex p. Blackburn* as under:

“All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of criticism, nothing which is said by this person or that nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.”

7. Reverting to the present cases, it is noticed from the impugned judgment that around 28 Judges of the High Court of Delhi, who had heard the writ petition filed by the appellant, had to recuse by the time the writ petition was finally decided on 2 nd March, 2015. Even after filing of the instant criminal appeal at least three Judges of this Court have recused themselves, for one reason or the other. Not only that, the appellant had moved a formal application being I.A. No.30030 of 2018 in the present appeal to recall the order passed on 7th February, 2018 appointing Senior Advocate Mr. Vikas Singh as Amicus Curiae, as she had strong objection to his appointment. Similarly, the appellant had filed I.A. No.111244 of 2017 for recall of order dated 27th October, 2017 appointing Ms. Pinky Anand, learned Additional Solicitor General to assist the Court as Amicus Curiae. That application was also allowed by this Court vide order dated 4th December, 2017.

8. Be that as it may, after the matter was assigned to this Bench during the hearing, which lasted for more than two hours on 11th April, 2019, the appellant had orally suggested that this Bench should not hear the cases as has been noted in the said order. On that day, the Court reserved its order giving liberty to the appellant to file additional documents to reinforce her arguments on the merits of the contempt proceedings, as insisted by her during the oral submission. Instead of availing of that liberty, the appellant chose to file I.A. No.62789 of 2019 in Writ Petition (C) No.13 of 2018 praying for recusal of one of us (A.M. Khanwilkar, J.). However, keeping in mind the totality of the situation, the Court declined her prayer as recorded in the order dated 12th July, 2019.

9. Indubitably, it is always open for a Judge to recuse at his own volition from a case entrusted to him by the Chief Justice. But, that may be a matter of his own choosing. Recusal, at the asking of the litigating party, cannot be countenanced unless it deserves due consideration and is justified. We draw support from the exposition of the Constitution Bench in *Supreme Court Advocates-On-Record Association and Another Vs. Union of India* . It must never be forgotten that an impartial Judge is the quintessence for a fair trial and one should not hesitate to recuse if there are just and reasonable grounds. At the same time, one cannot be oblivious of the duty of a Judge which is to discharge his responsibility

with absolute earnestness, sincerity and being true to the oath of his/her office. After perusal of the assertions made in the stated I.A.s, we have no hesitation in observing that the same are devoid of merit and without any substance. To observe sobriety, however, we say no more.

10. Reverting to the criminal appeal, after hearing the parties and the same being a statutory appeal preferred by the appellant against the finding of guilt and punishment under the Contempt of Courts Act, 1971, the same requires due consideration although there is a delay of 32 days as stated in I.A. No.128666 of 2017. The delay in filing appeal is condoned in terms of this order. Appeal be registered by the office. The appeal is admitted. Fresh notice be issued to the respondents.

11. The appellant has prayed for stay of operation of the impugned judgment and order pending hearing and decision on this appeal. As it appears from the record that two years period for which the appellant has been restrained from appearing in the High Court of Delhi and Courts Subordinate thereunder in terms of the impugned judgment is already over, nevertheless we consider it appropriate to stay the effect of the impugned judgment and order dated 17th December, 2015 until disposal of the appeal. Accordingly, prayer for stay is disposed of in the above terms.

12. Now, we may take up the other applications filed by the appellant in the criminal appeal under consideration in seriatim.

13. This application is for condoning delay in filing criminal appeal. As noted in paragraph 10 above, the same is allowed.

14. By this application, appellant has prayed that the order dated 7th February, 2018 appointing Senior Advocate Mr. Vikas Singh be recalled. That prayer has been granted in terms of order dated 30th July, 2018 passed by the Court. The other relief claimed in the application is to issue notice to the office of the Attorney General for India, which is similar to one made in another application filed by the appellant. As the criminal appeal has been admitted, the Registry shall proceed in the matter as per the Rules. Hence, no further orders are required in that regard.

15. The appellant has then prayed for giving a qualified lawyer; to give appellant a full and fair hearing in the matter. The record shows that fair hearing has been given to the appellant thus far; and it would be extended even after admission of the appeal. No formal order is required in that regard.

16. Accordingly, the application under consideration is disposed of.

17. By this application, appellant has prayed that hearing of the appeal be referred to a Five Judge Constitution Bench of this Court. This prayer, to say the least, is premature. For, so long as the Court does not take up the appeal for final hearing, the question of referring the matter to a Five Judge Constitution Bench that too before the appeal is

admitted cannot be countenanced. This application is disposed of while giving liberty to the appellant to persuade the Court at the time of final hearing of the appeal to refer the case to a Five Judge Constitution Bench. If the concerned Court finds merit in that submission, the Court may accede to that prayer. This application is disposed of accordingly.

18. By this application, appellant has prayed for a direction to summon the paper book and the electronic record of Delhi High Court in Writ Petition (C) No.1280 of 2012, Contempt Case (Crl.) No.2/2014, Contempt Case (Crl.) No.3/2012 and O.M.P. No.647/2012. As the present appeal arises from Contempt Case (Crl.) No.2/2014, and the appeal having been admitted for final hearing, the Registry may take steps as per the Rules in that regard. So far as the record of other proceedings referred to in this application, we keep it open to the appellant to make that request at the final hearing of the present criminal appeal. That request can be considered at the appropriate stage. The application is disposed of accordingly.

19. By this application, appellant has sought direction against the Registry of this Court to ensure that the records of these cases are maintained properly. The grievance in this application is founded on some clerical error in the order passed by this Court in the past. It is seen that the same has been rectified.

20. We are of the view that no general direction to the Registry as prayed is warranted. Inasmuch as, the Registry is required to maintain and secure the record of all cases as per the Rules and if there is some error in the records, it is always open to the parties to bring it to the notice of the Court. As and when such occasion arises in future, appropriate direction can be given by the Court. The application is disposed of accordingly.

21. By this application, appellant has prayed that she may be permitted to place on record documents mentioned in paragraph Nos.10, 11 and 12 of the application which according to her are fraudulent, invalid and forged documents. The same were filed before the High Court of Delhi in Writ Petition (C) No.1280 of 2012 on behalf of General Electric Company, GE India Industrial Private Limited and GE Global Sourcing India Private Limited.

22. As regards the contempt proceedings, in relation to which the instant criminal appeal arises, the question is limited to the utterances made by the appellant before the High Court on 6th May, 2014; and as to whether the same would constitute criminal contempt in the face of the Court. No other issue is required to be considered. Suffice it to observe that the stated documents have no relevance to the question required to be answered in the present criminal appeal regarding the alleged utterances made by the appellant before the Delhi High Court. The application is disposed of accordingly.

23. This application has been filed on 26th July, 2019 after the matters were heard lastly on 12 th July, 2019, praying for listing of cases before a Bench not comprising of Justice A.M. Khanwilkar and Justice Ajay Rastogi. For the reasons already noted hitherto and for

rejecting the prayer in I.A. No.62789 of 2019 in Writ petition (C) No.13 of 2018, this application should follow the same suit and is rejected.

(Under Article 32 of the Constitution of India)

24. By this writ petition under Article 32 of the Constitution of India, the petitioner has sought mandamus against the respondents to ensure that the petitioner, who claims to be whistle-blower is not poisoned or harmed or harassed or targeted or followed in any manner and her complaint regarding sexual harassment against the two named members of the Supreme Court Bar Association be proceeded as per law. The petitioner has prayed as follows:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

(i) Issue a writ of Mandamus to the Respondents to immediately ensure that the Petitioner whistle-blower is not poisoned or harmed or harassed or targeted or followed in any manner and to ensure that the fundamental right to life of the Petitioner who is a whistle-blower and a complaint of sexual harassment and sexual assault is not violated and that the petitioner who is an advocate, a whistleblower against General Electric Company and a complainant of sexual harassment against Raian Karanjawala and of sexual harassment and sexual assault against Soli J Sorabjee is protected and stays safe;

(ii) To pass such other orders and further orders and to issue such other and further writs as may be deemed necessary on the facts and in the circumstances of the case.”

25. This writ petition came up for consideration on 1st March, 2019, the Court passed the following order:

“Ms. Seema Sapra, Advocate, who is appearing as the petitioner-in-person in these writ petitions, has mentioned before this Court today that she has been assaulted by some policemen outside the High Court of Delhi last night.

It would be appropriate if Ms. Sapra, petitioner- in-person, files an First Information Report (FIR) to that effect in the Office of appropriate Deputy Commissioner of Police who is in-charge of the Tilak Marg Police Station, New Delhi. She may also seek police protection since she apprehends danger to her life.

As prayed for, liberty is also granted to Ms. Sapra, petitioner-in-person, to file interlocutory application for directions in the main writ petitions.”

Pursuant to the aforementioned order the petitioner was free to approach the office of the concerned Commissioner of Police and seek police protection if she apprehended danger to

her life. If the authorities had failed to take necessary action despite such request made by her, it was and will be open to the petitioner to pursue appropriate remedy in that regard. During the course of hearing, we were informed by the petitioner that she has filed a writ petition in the Delhi High Court. In that case, the petitioner may pursue that remedy to its logical end. If the relief claimed in the said writ petition is insufficient, it will be open to the petitioner to amend the said writ petition and/or to file a substantive writ petition if fresh cause of action has arisen. We grant liberty to the petitioner to pursue that remedy as per law. This writ petition is disposed of accordingly.

26. Nothing survives in this application as the petitioner has already been allowed to appear in-person. Hence, we dispose of the present application.

27. By this application, the petitioner has prayed as under:

“P R A Y E R S

a) Recall/modify its order dated 11th April, 2019 in Criminal Appeal Diary No. 10342 /2016, in Writ Petition Civil No.13/2018 and in Writ Petition Civil No.1027/2018 and list these cases for hearing the Petitioner in open court on the medical evidence establishing that she was poisoned, that her ankle was deliberately dislocated, that her whistle-blower complaints of corruption against General Electric Company have been covered up and that Writ Petition Civil No.1280/2012 before the Delhi High Court was subverted by fraud on the court as described in IA 112422/2018 and by the filing of false affidavits and fabricated documents by the Railway Ministry;

b) Recall/modify its order dated 11th April, 2019 in Criminal Appeal Diary No. 10342/2016, in Writ Petition Civil No.13/2018 and in Writ Petition Civil No.1027/2018 and summon the record of the Delhi High Court in Writ Petition Civil No.1280/2012 and allow the Petitioner to make submission on these documents establishing both her corruption complaints against General Electric Company and her complaints of poisoning and targeting;

c) Recall/modify its order dated 11th April, 2019 in Criminal Appeal Diary No.10342/2016, in Writ Petition Civil No.13/2018 and in Writ Petition Civil No.1027/2018 and direct that these cases be listed before a Bench not comprising Justice Khanwilkar;

d) Recall/modify its order dated 11th April, 2019 in Criminal Appeal Diary No.10342/2016, in Writ Petition Civil No.13/2018 and in Writ Petition Civil No.1027/2018 and list all three cases for hearing and permit the Petitioner to make her oral submissions in open court on the merits of these three cases separately on law and facts as this hearing has not taken place;

e) Direct the Government of India through the Ministry of Home Affairs and direct

the Delhi Police through the Commissioner of Police to provide immediate protection to the Petitioner to prevent her being poisoned further or being targeted in any manner as the life of the Petitioner must be protected and a situation where the Petitioner is eliminated or incapacitated cannot be allowed to develop;

f) Direct that the Petitioner be protected so that she is able to file affidavits and documents bringing further relevant facts on record including her complaints of poisoning after 2015 March and then list these cases for hearing the Petitioner on these documents in open court;

g) Pass any other or further orders, as this Hon'ble Court may deem fit and proper.”
As regards the prayer to direct that the cases be not listed before a Bench comprising of Justice A.M. Khanwilkar, the same has already been rejected in the earlier part of this order. The prayer for recall of order dated 11th April, 2019 and for hearing of cases in open Court also stands redressed as the matters were heard in open Court on 12th July, 2019. Further, considering the fact that we have already given liberty to the petitioner to pursue remedy of fresh writ petition filed by her in Delhi High Court including to pursue such other remedies as may be permissible in law, coupled with the fact that the main relief claimed in the writ petition was limited to issue of direction to protect liberty of the petitioner which has been redressed in terms of order dated 1 st March, 2019, without expressing any opinion on the correctness of the assertions made in the application one way or the other and leaving all contentions and remedies available to the petitioner in that regard open, we dispose of this application. Ordered accordingly.

28. By this application, the petitioner has prayed for the following reliefs:

“P R A Y E R S

a) Direct the Government of India through the Ministry of Home Affairs to provide the Petitioner with some temporary independent housing which is within the control of the Petitioner and where she can take steps to protect herself;

b) Direct the Government of India through the Ministry of Home Affairs to take note that the Petitioner facing a threat to her life is being forced to sleep in a tent in Lodhi Gardens and where she has been poisoned on 5, 6, 7, 8 and 9 July 2019 and has been prevented from obtaining sleep for more than 3-4 hours.

c) Direct the Government of India through the Ministry of Home Affairs and the Commissioner of Police to ensure that the Petitioner is not poisoned and to address her complaint of poisoning;

d) List IA 62789/2019 before an appropriate Bench at the earliest on an urgent basis and thereafter list this Writ Petition Civil No.13/2018, Writ Petition Civil No.1027/2018 and Criminal Appeal Diary No.10342/2016 for a full and fair

hearing basis as the petitioner faces a grave and immediate threat to her life and well-being;

e) pass any other or further orders, as this Hon'ble Court may deem fit and proper.” For the reasons recorded hitherto, while dealing with the previous application and the main writ petition, we dispose of this application with liberty to the petitioner to pursue the writ petition filed before the High Court and/or any other appropriate remedy as per law. We must, however, record that by this application, the petitioner has prayed for substantive relief that too beyond the relief claimed in the main writ petition.

29. Be that as it may, we do not deem it appropriate to enlarge the scope of the present writ petition moreso because the petitioner has already elected to move the Delhi High Court. In the same way, the petitioner can pursue additional or further relief claimed in this application before that Court. We give that liberty to the petitioner and dispose of this application accordingly.

30. By this application, the petitioner has sought direction against respondent No.1 to immediately provide Z+ Security to her and full protection to ensure that she is not poisoned further or targeted or followed or threatened or intimidated. This relief is another shade of the substantive relief claimed in the main writ petition and also in the companion writ petition. Even this application, therefore, is disposed of for the same reasons as noted in reference to the main writ petition, on the same terms. Ordered accordingly.

31. By this writ petition the petitioner has prayed as follows:

“(i) Issue a writ of Mandamus to Respondent 1, the Government of India through the Ministry of Home Affairs to act on the Petitioner’s complaint forwarded to the President and Prime Minister of India by email dated February 12, 2013 and to constitute a high level complaints committee in accordance with the Supreme Court’s directions in Vishaka & Others v. State of Rajasthan & Others and in Medha Kotwal Lele and Others v. Union of India and Others to investigate and redress the petitioner’s complaint of sexual harassment against Mr. Soli J. Sorabjee, when the latter held the constitutional post of Attorney General of India;

(ii) Direct the CBI and Police to register an FIR against Soli J Sorabjee for sexually assaulting the petitioner and attempting to rape her after plying her with alcohol and after possibly drugging her;

(iii) direct the Supreme Court Gender Sensitisation and Internal Complaints Committee to examine the petitioner’s complaint of sexual harassment against Raian N Karanjawala;

(iv) In the alternative to prayer (i), direct the Supreme Court Gender Sensitisation and Internal Complaints Committee to examine the petitioner’s complaint of sexual

harassment against Soli J Sorabjee;

(v) Direct the respondent no.1 to provide the petitioner with Z+ security;

(vi) To pass such other orders and further orders and to issue such other and further writs as may be deemed necessary on the facts and in the circumstances of the case.”

32. As noted while disposing of the accompanying writ petition, we deem it appropriate to dispose of even this writ petition with liberty to the petitioner to pursue remedy before the Delhi High Court, already filed by the petitioner. In our opinion, it may not be appropriate to permit the petitioner to approach different forums for overlapping issues concerning her security or her grievance regarding inaction of the Authorities to process her complaint regarding sexual harassment. Accordingly, we dispose of this writ petition with liberty to the petitioner to pursue remedy before the Delhi High Court in the pending proceedings or by way of substantive proceedings so that all the overlapping issues can be considered by the Court appropriately.

33. Nothing survives in this C.M.P. No.122904 of 2018 as the petitioner has been allowed to appear in-person. Hence, we dispose of the present application also because the main writ petition is disposed of.

34. By this application, the petitioner has prayed for the following reliefs:

“(i) To direct the Supreme Court registry to dispense with the office objections in this writ petition and to list the writ petition for hearing before the Hon’ble Court at the earliest possible date;

(ii) To summon the entire court record of Writ Petition Civil No.1280/2012, Cont. Case (Crl.) 2/2014, Cont. Case (Crl.) 3/2012, and O.M.P.647/2012, all from the High Court of Delhi;

(iii) To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.”

As regards relief (i), that does not survive for consideration as the writ petition itself has been disposed of. Further, the second relief is similar to one in I.A. No.122625 of 2017 in Criminal Appeal No.10342 of 2016. For the same reasons, therefore, even this application is disposed of.