L.D. Jaikwal vs State Of U.P on 17 May, 1984

Equivalent citations: 1984 AIR 1374, 1984 SCR (3) 833, AIR 1984 SUPREME COURT 1374, 1984 (3) SCC 405, 1984 CRIAPPR(SC) 232, 1984 CURCRIJ 271, 1984 SCC(CRI) 421, 1984 BBCJ 135, (1984) GUJ LH 784, (1984) 2 SCWR 99, (1984) ALLCRIR 430, (1984) ALLCRIC 300, (1984) ALL WC 701

Author: M.P. Thakkar

Bench: M.P. Thakkar, A.P. Sen

PETITIONER:
L.D. JAIKWAL

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT17/05/1984

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
SEN, A.P. (J)

CITATION:
1984 AIR 1374 1984 SCR (3) 833
1984 SCC (3) 405 1984 SCALE (1)862
CITATOR INFO :
R 1991 SC1834 (2)

ACT:
Contempt of Courts Act 1971, Section 2(c) (1)
Advocate making written application couched in scurrilous language-Imputation-Judge 'a corrupt Judge' 'and contaminating the seat of justice'-High Court convicting and sentencing advocate for contempt of Court-appeal to Supreme Court-Written apology tendered to Judge 'as directed by the Supreme Court'-Whether sufficient to set aside conviction by High Court.

HEADNOTE:
The appellant was a senior. advocate. He was required to appear before the Special Judge to make his submission on

the question of sentence to be imposed upon his client who was convicted for an offence under s.5(2) of the Prevention of Corruption Act, 1947. As he appeared in a shirt-and-trouser outfit and not in Court attire, the Judge asked him to appear in the prescribed formal attire for being heard in his professional capacity. The appellant took umbrage and left the Court. Some other advocate appeared in the matter and the accused having being found guilty of the charge of corruption the Judge imposed a sentence of four years R.I.

The appellant made a written application to the Judge couched in scurrilous language making the imputation that the Judge was a 'corrupt Judge' and added that he was 'contaminating the seat of justice'; and forwarded copies of the application, without occasion or need to the Administrative Judge, Chief Secretary and other authorities.

The High Court initiated contempt proceedings, found the appellant guilty of having committed criminal contempt under s. 2(c)(1) of the Contempt of Courts Act, 1971 and after affording full opportunity of hearing, imposed a sentence of simple imprisonment for one week and a fine of Rs. 500.

Dismissing the Appeal,

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HELD: 1. Considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that the appellant should not escape with impunity on the mere tendering of an apology which in any case. does not wipe out the mischief. If such a apology were to be accepted, as a rule, and not as an exception, it would virtually be tantamount to issuing a 'licence' to scandalize courts and commit contempt of court with impunity. The High Court was justified in imposing a substantive sentence and the said sentence cannot be said to be excessive or out of proportion.[838E; 837E, 838F]

834

No Judge can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such a risk, it will sound the death knell of the institution. The day must be dreaded when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disagree on him with impunity, if any of his orders, or the decision rendered by him displeases any of the Advocates appearing in the matter. A line has therefore to be drawn some where, some day, by some one. That is why the Court is impelled to act (rather than merely sermonise) much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and 'with circumspection. [837H; 838A-B]

2. An attitude of unmerited leniency cannot be adopted

at the cost of principle and at the expense of the Judge who has been scandalized. To pursue a populist line of showing indulgence is not very difficult in fact it is more difficult to resist the temptation to do so rather than to adhere to the mail studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. [338C]

In the instant case, the appellant sought to justify his conduct before the High Court on the ground of the treatment alleged to have been meted out to him by the Special Judge. No remorse was felt. No sorrow was expressed. No apology was offered: He expressed his sorrow only before this Court, saying that he had lost his mental balance, and was granted an opportunity to tender an apology. He appeared before the Special Judge and tendered a written apology indicating that he was doing so: "as directed by the Hon'ble Supreme Court." This circumstance shows it was a 'paper' apology, and that the expression of sorrow came from his pen, not from his heart. It is one thing to "say" sorry-it is another to "feel" sorry. This Court cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisdiction. [886H; 837A-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 611 of 1982.

From the Judgment and order dated the 5th November, 1982 of the Allahabad High Court in Criminal Contempt Case No. 144/81.

N.N. Sharma, Mrs. Pankaj Verma & Mrs. Vijay Gupta for the Appellant.

Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by THAKKAR, J. We are sorry to say we cannot subscribe to the 'slap-say sorry and forget' school of thought in administration of contempt jurisprudence, Saying 'sorry' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.

An Advocate whose client had been convicted by the learned Special Judge, Dehradun, was required to appear before the learned Judge to make his submissions on the question of 'sentence' to be imposed on the accused upon his being found guilty of an offence under Section 5(2) of the Prevention of Corruption Act by the Court The learned Advocate appeared in a shirt-and-trouser-outfit in disregard of the rule requiring him to appear only in Court attire when appearing in his professional capacity, The learned Judge asked him to appear in the prescribed formal attire for being heard in his professional capacity. The learned Advocate apparently took

umbrage and left the Court. Some other Advocate appeared on behalf of accused who had been found guilty of a charge of corruption. The learned Judge imposed a sentence of 4 years' R.I. which may have been considered to be on the high side. The matter in that case could have been carried to the High Court by way of an appeal, both, on the question of conviction as also, on the question of sentence. But so far as the Court of the Special Judge was concerned, as the judgment had been pronounced and nothing more remained to be done by that Court, the matter should have rested there. The appellant, a senior Advocate of long standing (not an immature inexperienced junior), however made a written application to the learned Special Judge couched in scurrilous. language making the imputation that the Judge was a "corrupt Judge" and adding that he was " contaminating the seat of justice". A threat was also held out that a complaint was being lodged to higher authorities that he was corrupt and did not deserve to be retained in service. The offending portion may better be quoted:

> "I am making a complaint against you to the highest authorities in the country, that you are corrupt and do not deserve to be retained in service. The earlier people like you are bundled out the better for us all.
>
> As for quantum of sentence, I will never bow down before you. You may award the maximum sentence. Any way, you should feel ashamed of yourself that you are contaminating the seat of justice "

There is no known provision for making such an application after a matter is disposed of by a Judge. Nor was any legal purpose to be served by making such an application.

Obviously application was made to terrorize and harass the Judge for imposing a sentence which perhaps be considered to be on the high side whether or not it was really so was for the higher Court to decide.

As pointed out earlier, it was however not permissible to adopt a course of intimidation in order to frighten the Judge. His malicious purpose in making the application is established by another tell-tale circumstance by forwarding copy of this application, without any occasion or need for it, to several authorities and dignitaries.

1. Administrative Judge, Allahabad for favour of requisitioning case file S.T. No. 2 from Dehradun and scanning through the fasts.

2. Chief Secretary, Uttar Pradesh Government Lucknow.

3. Director, Vigilance Commission, U.P., Lucknow.

4. Prime Minister, Secretariat, Delhi.

5. State Counsel, Shri Pooran Singh, Court of Shri V.K. Agarwal, Dehradun.

6. Shri D. Vira, I.C.S., Chairman, Indian Police Commission, Delhi.

7. President, Bar Association, Dehradun

8. The Hon'ble Chief Justice of Bharat.

The High Court of Allahabad initiated contempt proceedings, found the appellant guilty of having committed criminal contempt under Section 2(c)(1) of the Contempt of Courts Act, 1971, after affording him full opportunity of hearing and imposed a sentence of S.I for 1 week and a fine of Rs. 500/- (in default to undergo a further term of S.I. for 1 week). Hence this appeal.

Before the High Court the appellant sought to justify his conduct on the ground of the treatment alleged to have been meted out to him by the learned Judge. No remorse was felt. No sorrow was expressed. No apology was offered. Only when the appellant approached this Court he expressed his sorrow before this Court saying that he had lost his mental balance. Upon finding that this Court was reluctant to hear him even on the question of sentence, as he had not even tendered his apology to the learned Judge who was scandalized, he prayed for three weeks' time to give him an opportunity to do so. His request was granted. He appeared before the learned Judge and tendered a written apology wherein he stated that he was doing so "as directed by the Hon'ble Supreme Court." This circumstance in a way shows that it was a 'paper' apology and the expression of sorrow came from his pen, not from his heart. For, it is one thing to "say" sorry-it is another to "feel" sorry. It is in this context that we have been obliged to make the opening remarks at the commencement of this judgment.

We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing.

If such an apology were to be accepted, as a rule, and not as an exception, it would in virtually be tantamount to issuing a 'licence' to scandalize courts and commit contempt of court with impunity.

It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of Courts.

No Judge can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound

the death knell of the institution line has therefore to be drawn somewhere, some day, by some one. That is why the Court is impelled to act (rather than merely sermonize), much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when some one else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult in fact it is more difficult to resist the temptation to do so rather than to adhere to the nail- studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. the day must be dreaded when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the Advocates appearing in the matter.

We firmly believe that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief. We are of the opinion that the High Court was therefore justified in imposing a substantive sentence. And the sentence imposed cannot be said to be excessive or out of proportion.

Appeal is accordingly dismissed.

N.V.K. Appeal dismissed.