

IN THE SUPREME COURT OF PAKISTAN
(Appellate jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Umar Ata Bandial
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah
Mr. Justice Munib Akhtar

Intra Court Appeal No. 07 of 2018 in
Criminal Original Petition No. 09 of 2018

(Against the order dated 2.8.2018 passed by this Court
in CrI. Original Petition No. 09 of 2018)

Talal Ahmed Chaudhry.

... Appellant(s)

VERSUS

The State.

... Respondent(s)

For the Appellant(s) : Mr. Kamran Murtaza, Sr. ASC a/w
Talal Ahmed Chaudhry.

For the Respondent(s) : Ch. Aamir Rehman, Addl. Attorney General.

Date of hearing : 09.10.2018

ORDER

Sajjad Ali Shah, J. Through the instant appeal under Section 19 of the Contempt of Court Ordinance, 2003, the appellant has impugned the order of this Court passed by a three-Member Bench whereby the appellant, after being put to trial, was convicted under Sections 3 and 5 of the said Ordinance of 2003 and was sentenced to suffer imprisonment till the rising of the Court with a fine of Rs.100,000/-.

2. Briefly, the appellant who at the relevant time was ‘Minister of State’ of the ruling Party PML(N), in his public speeches delivered on 24.1.2018 and 27.1.2018 duly telecast by different television channels, made the following derogatory remarks against the Supreme Court and its Judges:-

"ایکسپریس ٹی وی: 24.01.2018

طلال چوہدری:

یہاں پر آمروں کو legitimacy دی گئی فیصلوں کے ساتھ وہ بارحمت نہیں دے سکتا وہ باب زحمت
نے دی ہے۔ بارحمت کے لئے ہم آنکھیں بھی بچھائیں گے عزت بھی کریں گے لیکن پاکستان کی مایہ رخی میں

Asrar Ahmed Khan as DW-1, Musaddiq Malik as DW-2, Muhammad Tahir as DW-3, Atta Muhammad as DW-4 and Imtiaz Khan as DW-5. These witnesses were duly cross examined by the Additional Attorney General for Pakistan. After completion of evidence and hearing the parties, the appellant was convicted and sentenced as mentioned above.

6. Mr. Kamran Murtaza learned Sr. ASC appearing for the appellant submitted that the appellant deeply regrets his words and submits an unconditional apology if the utterances on 24.1.2018 and 27.1.2018 amounted to contempt of this Court. It was contended that the Courts had always shown magnanimity and restraint in taking stern action against alleged contemnors. Therefore, since the appellant has thrown himself at the mercy of this Court and begged pardon, a similar treatment ought to be given to him by setting aside his sentence which in fact has disqualified him under Article 63(1)(g) by debarring him from taking part in politics for a period of five years. Mr. Kamran Murtaza while citing the judgment of this Court in Contempt proceedings against Imran Khan, Chairman, Pakistan Tehreek-i-Insaf (PLD 2014 SC 367) contends that in the said case this Court has held that proceedings of such nature are to be viewed on the golden principles of forgiveness, remission and pardon enshrined in Islam, which is one of the hallmarks of the Islamic system of dispensation of justice. A prudent Qazi/Judge entrusted with the onerous task of dispensation of justice is supposed to be composed and cool minded so as to tactfully deal with such petty notions and remarks, which might have been made in good faith or due to a slip of the tongue. Moreover, just and fair remarks made unconsciously or under the tide of momentary emotions, in somewhat harsh language, are not to be readily taken in the negative sense, but as means for soul-searching and improvement in the system. Learned counsel further relied on paragraph 5 of the judgment of this court delivered in the case of Riaz Hanif Rahi vs. Saeed-uz-Zaman Siddiqui (2011 SCMR 948) wherein it was observed that where a personal opinion is not derogatory to the

judiciary and the viewpoint does not ridicule the judiciary, all fair comments are rather a healthy sign of the public reposing trust owed to its judicial system. He further referred to the case of General (Retd.) Mirza Aslam Baig (PLD 1993 SC 310) to contend that the Court in this case was of the view that though contempt was established, severe admonition and reprimand was sufficient to retrieve the honor and dignity of the Court and the purpose and object of the law of contempt stood satisfied. Lastly, counsel relied on the case of Habibul Wahab Elkheiri vs. Khan Abdul Wali Khan and 4 others (PLD 1978 SC 85) and contended that in similar circumstances Mr. Abdul Wali Khan had made very offensive remarks but the Court had considered his statement in the context in which it was made and came to the conclusion that he had no intention of maligning the Court or attributing motives to any of the Judges. His apology was accepted, and it was held that the dignity and the authority of the Court has been duly vindicated and that it was not necessary to proceed any further in the matter. Mr. Kamran Murtaza, in the circumstances, contends that the appellant had no intention of maligning the Courts or ridiculing any of the Judges through utterances made on 24.1.2018 and 27.1.2018, therefore, in view of the principles laid down by this Court in the referred judgments, the appellant ought to be forgiven and pardoned.

7. Before we examine the submission and the worth of the apology so tendered, we would like to reiterate the consistent view of this Court that the real object and the ultimate purpose in the mind of the Court while initiating contempt proceedings is not to afford protection to the judges from imputation to which they might be exposed personally as individuals or to satisfy the ego of a judge by punishing such person, instead, it is to maintain and strengthen the confidence of the public in general and the litigants, in the Court and to vindicate the honor and dignity of the Court to ensure that the administration of justice is not diminished or weakened. On the other hand, it is also true that Courts in the matter of contempt tend to show grace and magnanimity towards the alleged contemnor in cases where

the contemnor without justifying his action/statement shows his repentance, remorse and at the earliest opportunity submits an unconditional apology by throwing himself at the mercy of the Courts. However, this is not a rule of thumb and cannot be applied to every case as an apology tendered does not automatically purge the contemnor of the contempt and may not necessarily be accepted unless the Court from the surrounding circumstances is satisfied about the *bona fide* of the contemnor.

8. Coming to the submission on the issue in hand, it has not been disputed or denied before us that the offending words uttered by the appellant in his speeches made on 24.01.2018 and 27.01.2018, the gists whereof have been reproduced above, were prejudicial to the integrity and independence of the judiciary of Pakistan and surely detrimental to the safe administration of justice beside tending to bring this Court and the judges of this Court into disrespect and ridicule. It is important to note that the case law referred to by the learned counsel for the appellant in order to plead that the Courts in contempt proceedings have always been showing magnanimity and restraint and avoid taking any stern action against the alleged contemnor who begs an apology by throwing himself at the mercy of the Court pertain to instances where this Court has come to the conclusion that the offending words/speech were made in good faith without any intention of scandalizing the Court or to bring its judges into disrespect, contempt or to abuse the judiciary but were made to project a genuine issue, however the selection of words in projecting their point of view was improper. It is, therefore, important that before we consider the apology tendered at the appellate stage and that too orally through an advocate, the circumstance in which the derogatory and insulting remarks against the judges of this Court and the judiciary as an institution were made be examined.

9. It is very important to note that the offending speech was made by the appellant after this Court had pronounced its verdict in the case of Imran Ahmed

Khan Niazi vs. Muhammad Nawaz Sharif (PLD 2017 SC 692) and had declared that Mian Muhammad Nawaz Sharif the then Prime Minister of Pakistan was not honest in terms of Section 99(f) of the Representation of the People Act, 1976 (ROPA) and Article 62(1)(f) of the Constitution and, therefore, disqualified to be a Member of the Parliament, soon thereafter some of the Members of the ruling party (PML-N) in order to show their allegiance with Mian Muhammad Nawaz Sharif started a campaign of maligning the Office of the Hon'ble Chief Justice of Pakistan and the Judges of this Court in public gatherings and on electronic media. The appellant being one such firebrand speaker has deliberately and intentionally in the stated background, through the stated utterances, attacked the integrity and independence of the judiciary to please and support his leader with the sole intent to ridicule and lower the respect and to shake the confidence of people at large from the safe administration of justice. This conduct compelled the Court to initiate contempt proceedings against him for undermining the authority, integrity and independence of this Court. The tenor and content of the speech of the appellant clearly shows that it was designed and worded to scandalize the Court and to bring the Hon'ble Judges of this Court into hatred, ridicule or contempt. In the circumstance, the utterance made by the appellant can by no stretch of imagination be termed as *bona-fide* or to highlight a genuine issue to earn him a lenient view in the light of the dicta laid down by this Court in the cases referred to by the learned ASC for the appellant.

10. Besides, an apology consists of acknowledgement of commission of contempt and an unequivocal expression of regret for such commission whereas in the instant case the appellant throughout has been trying to justify his offending statement by taking different pleas and even the apology so tendered was in case his justification with regard to the offending statement was not accepted. Unfortunately we see neither genuine remorse nor sincerity on the apology which in the instant case is being used by the Appellant to get out of a difficult situation

that he finds himself in for having used intemperate and contemptuous language against the highest Court of the country and the Judges.

11. Additionally, the apology so tendered on behalf of the appellant cannot be accepted as it does not meet the requisite criteria laid down by a five-Member Bench of this Court in the case of Syed Masroor Ahsan and others vs. Ardeshir Cowasjee and others (PLD 1998 SC 823) which has been followed in a number of cases including Baz Muhammad Kakar and others vs. Federation of Pakistan through Ministry of Law & Justice and others (PLD 2012 SC 923) and Ch. Iftikhar Ahmed, IG Islamabad and others vs. the State (2018 SCMR 1385) consisting of the same number of Judges, in the following terms:-

“96. It is, therefore, quite apparent that if apology is tendered it would not automatically purge the contemnor from the contempt and may not necessarily be accepted unless the Court from surrounding circumstances is satisfied about his bona fides. The acceptance or rejection of apology, therefore, depends upon the volume and nature of contempt allegedly committed. However, prepondered view revolves around the bona fides of the contemnor and satisfaction of the Court about genuineness of the apology being tendered.

97. Some of the fundamentals for accepting the apology can be enumerated as:

- (a) The apology must be offered at the earlier stage of the contempt proceedings and may not be postponed till fag-end of the proceedings.*
- (b) The apology must be unconditional, unreserved and unqualified.*
- (c) The apology should not only appear but must also satisfactorily represent sincere and genuine remorse and should not be half-hearted or mere formality.*
- (d) The contemnor should not endeavour to justify his conduct”.*

12. In the circumstances, notwithstanding the fact that the apology tendered by the appellant does not meet the required standard laid down by this Court or lacks *bona fide*, we are of the view that the contempt committed by the appellant is so grave that the apology is not sufficient to purge the contempt.

13. On merits, learned counsel for the appellant, without denying or disputing the contents of the speeches as reproduced above, contends that the proceedings initiated on the basis of such utterances are in gross violations of Article 19 of the Constitution which guarantees freedom of speech to the citizen. Therefore, the appellant should not be punished under the Ordinance of 2003.

14. The right to freedom of speech and expression as guaranteed under Article 19 of the Constitution admittedly is not absolute, unlimited or unfettered but subject to reasonable restrictions imposed by the law and one such restriction so imposed is in relation to the contempt of Court. The protective cover so provided to freedom of speech and expression cannot be stretched to cover a speech, comment or publication which may tend to influence, impede, embarrass or obstruct the administration of justice, scandalizes the Court and brings the Hon'ble Judges of this Court into hatred, ridicule or contempt. The argument justifying offending remarks used against the judiciary by taking the shield of freedom of speech and expression as guaranteed under Article 19 of the Constitution was considered and turned down by the three-Member Bench of this Court in the order impugned by holding that:-

“It is undeniable that every citizen has been conferred right of freedom of speech and expression and such right has been conferred in Article 19 of the Constitution, which is one of the fundamental right provided in Para-II of the Constitution. However, such freedom of speech and expression given to every citizen has been made subject to reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with the foreign States, public order, decency or

morality, or in relation to contempt of Court, [commission of] or incitement of an offence. Thus it is apparent that contempt of Court is one of the law to which the fundamental right of every citizen to freedom of speech and expression has been subjected to. In exercising the fundamental right of freedom of speech and freedom of expression, if a citizen impinges upon and transgresses the reasonable restrictions of law of contempt of Court, he will make himself culpable and liable to be proceeded against under the contempt of Court Law. The rationale of imposition of conditions on freedom of speech and expression as underlined by the Constitution itself is that the citizens while exercising such right have to maintain decency and decorum and not in a manner, which will infringe upon the rights of other citizens or transgress the mandate of law in relation to the working of State Institutions. Further the rationale of making of law of contempt by the Constitution itself and by promulgation of the Ordinance is as a matter of public policy to secure the law of the land which it is the duty of the Court to uphold and to secure the judges and the Court from being scandalized into hatred or ridicule. The contempt law thus is meant basically to maintain the efficacy of the Courts of justice and to secure public confidence in the administration of justice”.

15. The reasoning reproduced above appears to be in consonance with the consistent view of this Court taken by a five-Member Bench in the case of Syed Masroor Ahsan (*supra*), again followed in number of cases including in the case of Baz Muhammad Kakar (*supra*), in the following terms:-

“Fundamental rights wherever exercised, impose corresponding restrictions for ensuring protection of collective benefit and safety including preservation of the society and its morals. Absolute liberty of an individual for doing what he pleases even with regard to innocent matters can sometimes be detrimental. Therefore, object of the exercise of rights should be subservient to common good. Observations made in Atkin v. Children Hospital (1923) 261 US 555) can be referred. Bare perusal of Article 19 of the Constitution postulates reasonable

restraints whereby citizen while exercising his right of freedom of speech or expression and freedom of Press is prohibited to conduct himself in any manner which may violate security or defence of Pakistan or part thereof, or could affect friendly relations with Foreign States, in the same way citizen under freedom clause is bound to ensure that his freedom does not strike against public order, decency or morality or provisions regarding contempt of Court. The right of freedom further prohibits incitement of citizen for committing any offence. Therefore, owning the responsibility of honouring the dictates of Constitution the Supreme Law of the country firmly embodied in Article 19 of the Constitution, every citizen while making speech, expressing himself or causing publication in the press is obligated to refrain from all such acts which may be calculated to constitute contempt of Court. For emphasis we may impress upon normal circumstance, which under the Constitution disdains immoral, indecent, anti-State, or un-Islamic Publications, expressions or speeches. It equally creates an obligation for the citizen, while exercising his right to ensure that his comment with regard to conduct of a Judge or the Court should not be violative of law. From scrutiny of the precedent case-law and all relevant factors coupled with fundamental rights, the Authors of editorial/articles, Publishers, Editors of newspapers or journals or Advocates have bounden duty to avoid from using strikingly pungent language which smacks of loud bitterness or aimed at emitting intemperate expression or abnormal understanding suggesting scandalization of the Court or cause obstruction to the impartial administration of justice”.

16. Examining the offending speeches on the touch stone of the law laid down by this Court in the judgments cited above, we are of the considered view that the offending speeches impinge upon and transgress the bench mark of reasonable restriction imposed by the Constitution itself as well as the law on the subject. The appellant in fact has crossed the boundary of decency and morality by a calculated move with an aim to obstruct and diminish the administration of justice

and, therefore, he cannot be allowed to escape the consequences by pleading freedom of speech and expression.

17. It was next contended that the charge so framed was defective as it did not contain the contents of the public speeches dated 24.1.2018 and 27.1.2018 and, therefore, no punishment could be imposed upon the appellant on the basis of such defective charge. The contention needs examination of the record which reflects that the contents of the offending speeches were brought to the notice of the Hon'ble Chief Justice by the learned Registrar of this Court on 1.2.2018 through a written note. The Hon'ble Chief Justice of Pakistan on the same day constituted a Bench and directed the Office to list the matter for hearing on 6.2.2018. Accordingly notices were issued. The appellant effected appearance on 6.2.2018 when the Court examined the transcript of the offending speeches dated 24.1.2018 and 27.1.2018 made by the appellant and after finding the speeches derogatory, initiated proceedings under Article 204 of the Constitution read with Section 5 of the Ordinance of 2003 and directed issuance of show cause notice. In consequent to the show cause notice, appellant effected his personal appearance on 13.2.2018 and requested for time to engage a counsel. The matter was adjourned to 19.2.2018 and on that date the appellant's counsel sought time to furnish response to the show cause notice and ultimately furnished such response on 22.2.2018. Per record, when the case had come up for hearing on 26.2.2018, the appellant himself appeared and on his request, he was allowed to examine the transcript containing contemptuous speeches which was already annexed with the paper books supplied to him. Again on 6.3.2018 when the case came up for hearing, the learned Sr. ASC for the appellant stated that though he has gone through the transcript of the offending speeches but he has not been provided a compact disk wherein such offending speeches were recorded. The C.D. (Compact Disc) was accordingly provided to the appellant and the matter was adjourned to 8.3.2018. On the said date, the response submitted by the appellant was examined and the matter was placed for framing of

charge on 14.3.2018. The charge was accordingly framed and read over to the appellant which specifically stated the making of offending speeches by the appellant on 24.1.2018 and 27.1.2018.

18. No doubt the contents of the speeches were not reproduced in the charge but it is not the case that the appellant was misled or prejudiced on account of such omission. We have even repeatedly asked the appellant who was present in person as well as his counsel about the prejudice if any caused to the appellant on account of not detailing the speeches in the charge. However, they were not able to point out any prejudice caused to the appellant as throughout the appellant knew the derogatory utterances made by him leading to the initiation of the instant proceedings. Additionally, the appellant in his statement under Section 342 Cr.P.C. was confronted and his response was sought on the derogatory utterances. Though he admitted that he made such statement in his speech and press talk but according to him, these were edited and do not contain reference to the context. However, no explanation was provided as to the editing or the context in which such derogatory utterances were made. Even the C.D. containing the audio and visual recording of the derogatory speeches was played in open court to seek a possible explanation from the appellant, however, the appellant or his counsel had no answer but to take refuge of seeking an unconditional apology. The apology patently lacks remorse and sincerity and is being tendered to avoid consequences without showing lack of intent to malign the Court or any of the Hon'ble Judges. The contemnor has tried to explain away and justify his actions and has tendered an apology only as a matter of abundant caution and as a fall back. Such an apology cannot be accepted. Further, it has been settled by this Court in a number of cases, that since there is no yardstick available to fix the essential factors which a charge must contain, therefore, an omission or defect in charge which does not mislead or prejudice the right of the accused could be regarded as material and made the basis to vitiate a trial on the ground of error or omission in framing charge, it does not even make a

case of remand. Reference can readily be made to the case of Nadir Shah vs. the State (1980 SCMR 402), S.A. K. Rehmani vs. the State (2005 SCMR 364), M Younus Habib vs. the State (PLD 2006 SC 153) and Malik Muhammad Mumtaz Qadri vs. the State (PLD 2016 SC 17). The argument, therefore, fails.

19. Additionally, the record reflects that the appellant in his Section 342 Cr.P.C. statement refused examination under oath to show his *bona fide* and to explain what exactly he meant by such utterances. At this juncture, we may reiterate that the proceedings for contempt of Court are *sui generis* in their nature and being unique and one of a kind, contain some elements of both civil and criminal trial. Therefore, the principle of criminal trial that the burden of proof barring few exceptions never shifts to the accused, has hardly any application. In such cases once the prosecution has brought on record all the incriminating and contemptuous material attributed to the alleged contemnor and confronted to him while recording his statement under Section 342 Cr.P.C., then the burden shifts to the alleged contemnor to prove his innocence by showing his *bona fide* and proving that the offending statement was never meant to undermine the authority or obstruct/embarrass the administration of justice. The appellant has failed miserably in discharging that burden. The impugned order takes note of all pleas and defences taken by the Appellant and gives elaborate reasons for discarding the same. The learned counsel for the Appellant has not been able to show any legal, procedural or jurisdictional defect, error or flaw in the impugned order that may warrant any interference in the impugned order.

20. In the end, it was halfheartedly contended that the list of the witnesses provided by the prosecution did not contain the summary/gist of the evidence to be adduced by such witness, however, the learned counsel could not point out any statute or case law in support of his contention. To our mind, the only law which requires mentioning of gist/summary of facts against the name of every witness which he would depose is Section 7(2) of the Family Court Act, 1964 which provides that the plaint to be accompanied by a Schedule giving the number of witnesses intended to be produced in support of the plaint, the name and addresses

of the witnesses and brief summary of the facts to which they would depose. This being a provision of Special Law and of course is applicable to the category of cases provided therein. Even the study of case law on the subject would show that the requirement laid down by Section 7(2) of the Act 1964 is only directory in nature as instead of providing penal consequences for its non-compliance, it specifically through second proviso empowers the Court to permit the parties to call any witness at any later stage if the Court considers that the evidence of such witness is in the interest of justice.

21. For the foregoing reasons, this Intra Court Appeal is found meritless and, therefore, dismissed.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad
October 09, 2018
Approved for reporting
A. Rehman/