

(Original Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain
Mr. Justice Ijaz Ahmed Chaudhry

Criminal Original Petition No.92 of 2013

(Contempt proceedings against Imran Khan
Chairman, Pakistan Tehreek-i-Insaf)

On behalf of Federation/
On Court's notice:

Mr. Muneer A. Malik,
Attorney General for Pakistan

For alleged contemnors: Mr. Hamid Khan, Sr. ASC
Qazi M. Anwar, Sr. ASC
Mr. Ahmed Awais, ASC
Mr. Waqar Rana, ASC
Mrs. Shamsha Ali, ASC
a/w Imran Khan,
alleged contemnor

Date of hearing: 28.8.2013

Judgment

Anwar Zaheer Jamali, J – Keeping in view the purported statement of Imran Khan, Chairman, Pakistan Tehreek-i-Insaf (PTI), made in a press conference held by him on 26.7.2013, which received wide publicity in print and electronic media, the Registrar, Supreme Court of Pakistan, submitted a detailed note, duly accompanied with some news clippings of print media in this regard, for the kind perusal of the Honourable Chief Justice of Pakistan. This office note received due consideration before the Honourable Chief Justice of Pakistan, who accordingly, on 31.7.2013, passed following order in the matter:-

"7. Office note perused. Prima facie, it seems that he (Imran Khan) has started a deliberate campaign to scandalize the Court

and bring judges into hatred, ridicule or contempt. Thus, his above acts call for action for contempt of court under Article 204 of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003. Therefore, Notice be issued to him to appear on 2.8.2013 and explain as to why proceedings as envisaged by above provisions of the Constitution and law be not initiated against him. Notice be also issued to the learned Attorney General for Pakistan.”.

The present proceedings, thus, emanated in the above noted circumstances.

2. On 2.8.2013, when, in response to such notice, the alleged contemnor Imran Khan appeared before the Court alongwith his counsel, during the Court proceedings, his counsel submitted two written explanations, with reference to his purported remarks in the press conference held on 26.7.2013, which read as under:-

“EXPLANATION No. 1:

1. That Imran Khan has neither committed contempt of court under the law or the Constitution nor would even think of doing so.
2. That Imran Khan has not started any campaign either to scandalize the Court or to bring judges into hatred, ridicule or contempt. On the contrary, he has always struggled to uphold dignity and independence of the Supreme Court and the judiciary in general.
3. That Imran Khan believes in the rule of law, supremacy of the Constitution and independence of judiciary and, for this reason, he and his party was in the forefront of the movement for rule of law and restoration of judiciary.
4. That, after the general elections, Imran Khan has repeatedly requested and appealed to the Supreme Court to

redress the grievance of his party which has suffered massive electoral rigging at the hands of ECP and its officials. This clearly establishes that Imran Khan and his party have high expectations from the Supreme Court that justice would be done to them and that their grievance would be redressed.

5. It is respectfully submitted that the notice may kindly be recalled."

"EXPLANATION No. 2:

Respectfully Submitted

1. That the press statement was made in good faith on 26th July, 2013 where in reference to the 'Judiciary' was for the Returning Officers and/or District Returning Officers (belonging to the Subordinate Judiciary), assigned to the election process.
2. That Mr. Imran Khan has high respect and esteem for the Supreme Court of Pakistan and has high expectations from this Honourable Court for redressal of the grievances of the PTI arising out of the general elections."

These explanations were, however, not found satisfactory in the wake of word shameful "شرمناک" which, as per Court opinion *prima-facie*, tantamounts to ridicule and abuse the Judiciary. In these circumstances, the case was adjourned for today at the request of learned ASC for alleged contemnor Imran Khan with directions to submit the written reply.

3. In response to such directions, on 27.8.2013, in the form of C.M.A. No.520 of 2013, the alleged contemnor Imran Khan filed his detailed reply, stretching over more than

twenty typed pages, which also accompanied some annexures giving coverage to the news about the resignation of the Chief Election Commissioner of Pakistan *qua* speculations as to the cause of his resignation, etc.

4. Mr. Hamid Khan, learned Sr. ASC for the alleged contemnor, at the very outset of his submissions before us, strongly contended that the scandalous word shameful "شرمناک" attributed to his client, is result of some misunderstanding, as Imran Khan has always counted the institution of Judiciary in very high esteem and with utmost respect, which fact is fully demonstrated from his past conduct, particularly, during the movement of restoration of Judges in Musharaf's regime, when he and his party workers were found in forefront of this movement; obviously with the sole object of ensuring restoration of independent, prospering and strong judiciary in the country, which is the backbone in every democratic country for functioning of various institutions according the Constitution and the law and for protection of fundamental rights of every citizen of the country. He further submitted that the word shameful has multiple dictionary and usage meanings, therefore, this word, even if used by Imran Khan, should not be read in isolation to the context and purpose of his press conference, which was held solely to voice the grievance of his political party (PTI) against large scale mismanagement and rigging in the general elections

held on 11.5.2013. He also argued that recently PTI has published a comprehensive white paper highlighting so many instances of mismanagement and rigging in the said elections, which had materially tilted the elections results in favour of one political party. He reiterated that Imran Khan and his political party is serious in ensuring establishment of free and fair political practices and strong institutions in the country, particularly, the Judiciary as a whole, therefore, his single word in the press conference should not be considered as scandalous or indecent remarks against the superior Judiciary. He further attempted to clarify that the grievance of Imran Khan and his political party was about the administrative conduct of District Returning Officers and Returning Officers nominated from subordinate judiciary, who were responsible to hold free and fair elections in the country, but due to their inefficiency and failure to check mal-practices, corruption and *mala-fide*, they failed to deliver as per the spirit of elections laws. In this regard, he specifically referred to the contents of paragraphs twenty nine and thirty of his reply, which read as follows:-

"29. That, however, unfortunately at the time of the elections, the voters were disappointed to find that the R.Os were ineffective in checking the rigging and, in fact, were often found to be complicit in the process of rigging. While it is true that these ROs were performing an administrative function as opposed to a judicial function, but since they belonged to the genre of judicial officers, they brought a bad name to the judiciary. Thus, by contributing to massive rigging of elections, the ROs have not only

violated the fundamental rights of the people of Pakistan, they have also done great injustice to the judiciary as an institution.

30. That Mr. Imran Khan is totally committed to the independence of judiciary and upholding of its dignity. He has struggled for these objectives in the past and shall continue to do so in the future. However, he is deeply disappointed and saddened because of the following events:

(a) That the National Judicial Policy Making Committee (NJPMC), in its meeting held on 8th June 2013, expressed satisfaction with the performance of ROs and DROs during the election process. According to the press release issued by the Supreme Court, out of a total of 376 applications, 292 were found to be "baseless and frivolous". It was mentioned in the press release that not a single application 'worth consideration' against ROs and DROs was received in Baluchistan and the Islamabad Capital Territory.

It was indeed shocking to the PTI and its candidates. They felt that their cases have already been prejudged by the NJPMC. It appeared that the acts of the DROs and ROs have been condoned and they were given a clean chit by a body of such high standing. After this, what could they expect from the ECP or the election tribunals? A large number of the aggrieved candidates of PTI did not file election petitions because of disappointment arising out of such a press release.

(b) That this Honourable Court decided the petition of PML (N) to advance the date of the presidential election from 6 August to 30 July without notice to PTI and its Presidential candidate. PTI feels that it was a necessary party to the proceedings and ought to have been heard before the decision. Though deeply hurt, PTI decided to participate in the presidential election in order to uphold the Constitution and the democratic dispensation.

(c) That unfair election process has resulted in the unfortunate exit of the Chief Election Commissioner Mr. Fakhruddin G.Ebrahim, a person who enjoyed impeccable reputation for integrity. Yet the unethical, illegal and unjust election process finally took its toll. His body language since the general elections showed his helplessness in the face of powers that be, and the

Presidential Elections controversy was perhaps the proverbial 'last straw'. The episode leading to the resignation of Mr. Ebrahim has brought to light serious differences and dissensions amongst the members of the ECP which are purportedly based on political leanings and interests. It lends substance to the overwhelming perception that there was no cohesion within the ECP and the conduct of general elections by the ECP was extremely flawed.

(d) That it is submitted with great respect and humility that it is not unusual for this Honourable Court to take suo moto of much less grave incidents of injustice where only individuals are concerned, but it was disappointing that this honourable Court did not feel it proper to take suo motu notice of such grave injustice where rights of the people of Pakistan have been trampled."

5. Making further submissions, Mr. Hamid Khan contended that the issue regarding the purported remarks of Imran Khan against the judiciary as an institution have been blown out of proportion due to some irresponsible coverage of his Press Conference by the print and electronic media, otherwise there are many other political persons/party workers of other political parties, who have been using extremely insulting, derogatory and abusing language against the judiciary and openly throwing challenges to the superior judiciary, in particular to the Chief Justice of Pakistan, but such statements and remarks have either gone unnoticed or overlooked/ignored instead of some appropriate action against them under the provisions of Article 204 of the Constitution and other provisions of Contempt of Court laws. He also contended that if the facts of the present case are kept in juxtaposition to such statements of other political

persons, it will be obvious that in violation of Article 25 of the Constitution, his client has been unjustly discriminated for the purpose of proposed action against him, though he is entitled to equal treatment and non-discrimination in this regard. In the end he also referred to certain news clipping annexed with written reply submitted on behalf of alleged contemnor Imran Khan, which relate to the resignation of the Chief Election Commissioner of Pakistan and his press conference to show that the stance of large scale malpractice and mismanagement in the general election held on 11.5.2013 is fully endorsed with the remarks of the Chief Election Commissioner of Pakistan, which formed the basis of his resignation from the high office on the strength of principled stand taken by him in this regard.

6. In the end, reverting to the legal submissions in support of his arguments for discharge of the notice issued to his client, he referred to the judgments in the cases of Masroor Ahsan versus Ardeshir Cowasjee (PLD 1998 S.C. 823) and Baz Muhammad Kakar versus Federation of Pakistan (PLD 2012 S.C. 923), Dr. Muhammad Tahir-ul-Qadri versus Federation of Pakistan (PLD 2013 S.C. 413), particularly, the following observations therefrom:-

(PLD 1998 S.C. 823)

75.

“(i) That since the freedom of speech under Article 66 of the Constitution is subject to the Constitution, as a corollary, it

must follow that the freedom of speech of a Member of the Parliament is subject to the contempt law under Article 204 of the Constitution and, therefore, the above privilege is not absolute.

(ii)

(iii)

(iv) That Article 204 of the Constitution relating to the contempt of Court is to be construed in conjunction with Articles 19 and 66 thereof keeping in view the modern trend about contempt law obtaining in the world to ` protect and project the freedom of speech and expression and the ' freedom of press subject to reasonable restrictions.

(v) That the power of contempt should be used sparingly and only in serious cases and that the Court should not be either unduly touchy or over-astute in discovering new varieties of contempt for "its usefulness depends on the wisdom and restraint with which it is exercised".

(vi) That fair comments about the general working of Courts made in good faith in the public interest and in temperate language and fair comments on the merits of a decision of a Court made, after the pendency of the proceedings in a case in good faith and in temperate language without impugning the integrity or impartiality of the Judge are protected under Exceptions (i) and (ii) to section 3 of the Contempt of Court Act.".

(PLD 2012 S.C. 923)

11. The Attorney General in his submissions repeatedly urged the Court to adopt judicial restraint. He also cited a number of precedents and texts to emphasize the notion of judicial restraint in contempt cases. We repeatedly, requested him, and the other learned counsel to cite precedent from anywhere in the world where the courts exercised judicial restraint in the face of disobedience contempt. As stated earlier in the opinion, despite our repeated requests, no such precedent could be cited perhaps, because there is none. All the precedents which wax lyrical about the benefits of judicial restraint are, in reality, cases where .the

issue was that of scandalization. In cases of disobedience contempt, the approach is altogether different. In such cases, courts do not show restraint because at stake is the people's right to the rule of law, not the ego of judges.

12. When Lord Denning, the well known British judge, made his oft-quoted speech in *R v. Metropolitan Police Commissioner* (1968), he too was sitting in judgment on a case of scandalization contempt, not of disobedience contempt. The learned Attorney General emphatically relied on this speech without appreciating this destination. Lord Denning said: "Let me say at once that we will never use this jurisdiction (contempt) as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself". (*R v. Metropolitan Police Commissioner, ex parte Blackburn* (No.2) [1968] 2 QB 150 AT 154)"

PLD 2013 S.C. 413

"3. Before parting with the short order, it is essential to note that at the time of concluding his arguments on the points noted hereinabove, he started making uncalled for aspersions against the member of the Bench, which are tantamount prima facie to undermine its authority calling for action against him for Contempt of Court under Article 204(3) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003. However we, while exercising restraint, have decided not to proceed against him following the principle that such jurisdiction has to be exercised sparingly on case to case basis."

7. After the conclusion of arguments of learned Sr. ASC, with the permission of Court, alleged contemnor Imran Khan, also came at the rostrum and made his submissions on same lines. In unequivocal terms he made statement in open Court that he holds highest regard and respect for the Judiciary as an important institution and third pillar of the

State, which fact is manifest from his past as well as present conduct and that the use of word "شرمناک" attributed to him during the press conference held on 26.7.2013, was never meant to abuse or show disrespect to anyone, even the District Returning Officers and the Returning Officers, but it was used in the sense of unbecoming, rather than shameful or disgraceful. He further assured that he is committed to the supremacy of the Judiciary as an independent and highly respected institution, therefore, in future too there will be no such occasion when this Court will find him attributing any derogatory or scandalous remarks against this institution. More so, as he understands well that in every democratic country it is extremely necessary that judiciary as an institution should be allowed to function independently, in a most respectable and smooth manner without being made controversial so that the public at large may have full confidence on this institution and that he himself has full faith and confidence on this institution, particularly, upon the present day Judiciary, who has demonstrated its courage and independence in number of important cases decided in the recent past.

8. Mr. Munir A. Malik, learned Attorney General for Pakistan, who has appeared in these proceedings on Court notice, in his submissions made distinction in the contempt proceedings initiated by the apex Court for disobedience of its

order and contempt arising out of scandalous remarks made by an individual. He contended that in the latter case this Court had been showing its magnanimity and restraint in taking any stern action against the alleged contemnor. He further contended that the present day judiciary at the level of Apex Court, is the most independent judiciary in the history of our Country, and it has reached a point where whosoever makes allegation against the judiciary, people will never believe it and the judiciary will remain untainted. With these submissions, he suggested for a lenient view in the matter by discharging the show cause notice for initiating contempt proceedings against Chairman P.T.I. Mr. Imran Khan.

9. We have carefully considered all the submissions made by the learned ASC for Mr. Imran Khan and also the view expressed by the learned Attorney General for Pakistan during his brief submissions with reference to these proceedings. The submissions made by the learned ASC, as noted above, have much force, particularly in line with the case law cited by him, as discussed above. The principle of showing judicial restraint, particularly in the cases relating to the purported scandalization of the judiciary through oral remarks, is by now a well recognized principle in our judicial history, which has been time and again reiterated by the Court. In this regard, reference may be made to the cases of

Masroor Ahsan (*supra*), Baz Muhammad Kakar (*supra*), and Allam Tahir-ul-Qadri (*supra*), which amply cover this proposition.

10. Besides, viewing the present proceedings on the golden principles of [عفو] forgiveness/remission and [درگزر] 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 more composed and cool minded so as to tactfully deal with such pity 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. In such circumstances, depending upon the peculiar facts and circumstances of each case, for showing magnanimity, restraint and grace in his conduct, a *Qazi*/ Judge is not required to wait for an unconditional apology from the person charged with the allegations of using indecent language against him or for scandalizing the judiciary as an institution.

11. In the present proceedings, grievance of the alleged contemnor regarding the questionable conduct of

District Returning Officers and the Returning Officers, who are otherwise judicial officers, during the general elections 2013, *prima facie*, gains support from the remarks given by some other independent well reputed sources regarding over all conduct of the Elections 2013, therefore, use of word "شرمناک" is to be looked into in the context of exercise of such administrative powers by the judicial officers in a weak and irresponsible manner *qua* the fact that the Press Conference dated 26.7.2013, was also held by the alleged contemnor in the context of charges of mismanagement and corruption in said General Elections, as well as the fact that subsequent grievances agitated by his party in the form of various proceedings before different forums were not attended to promptly, rather placed in cold storage to their prejudice.

12. In our opinion, the submission of an unconditional apology by the alleged contemnor in every case is neither a condition precedent, nor a point of ego or prestige for the Courts, which practice is to be adhered to in each case as a rule of thumb before discharging the notice. Similarly, mere submission of unconditional apology is also no ground for further inaction in the proceedings or discharge of such notice without looking into the intent behind it. Rather, it would entirely depend upon the facts and circumstances of each case, particularly the stance taken by the alleged contemnor *qua* his over all conduct during such proceedings

before the Court, which will enable the Court seized of the matter to form an opinion about strict adherence to such a practice or otherwise.

13. In the present proceedings, the alleged contemnor has promptly responded to the notice at the first instance and placed his appearance before the Court on both the dates of hearing fixed in this matter to show due respect, honour and regard for the Court. Besides, earlier also he has filed two statements before the Court for explaining the background of his remark, which has been misconstrued and agitated this Court for issuing notice under consideration. Subsequent to it, again he has filed a detailed reply to the said notice of contempt proceedings wherein, he has stated the relevant facts honestly and clarified his position in so many words.

14. The facts noted above reasonably and fairly demonstrate that the word "شرمناک" used by the alleged contemnor was, *prima facie*, uttered by him in different sense and context, which was viewed as a derogatory and insulting remark for the judiciary as an institution. There is no denial of the fact that during General Elections 2013, held on 11.5.2013, at the request of Election Commission of Pakistan, which was acceded to, a good number of judicial officers from the District Judiciary were entrusted with the task of holding/supervising the said general elections in their

capacity as Returning and District Returning Officers, in a free, fair and transparent manner. In the wake of this position, the stance of alleged contemnor that his grievance regarding the malpractices in the said elections and purported remarks were in the context of such poor administrative performance shown by the said judicial officers, seems to be a plausible explanation from his side. More so, when the contempt proceedings are in the nature of quasi criminal proceedings, the benefit of any such doubt in favour of contemnor is to be extended to him. Moreover, we have noticed the conduct of Mr. Imran Khan in Court and observed that throughout the proceedings it was evident from his body language that he holds full respect and regard for the court. Even, while addressing the Court, he has shown signs of encountering an unpleasant situation and remorse on his face with reference to these proceedings, which have expanded from his one word objectionable remark, as discussed above.

15. Admittedly, Mr. Imran Khan is a public figure and duly elected member of National Assembly/Majlis-e-Shoora of Pakistan, who has not only been actively involved in politics for a considerable period, but is also the Chairman of a political party, P.T.I. In such circumstances, while considering his conduct, we also cannot lose sight of the provision of Articles-19 and 66 of our Constitution, relating to

freedom of speech and the privileges of members of Majlis-e-Shoora (Parliament). Thus, at this juncture, as a note of caution, we may observe that politicians and other public figures having their say and a following amongst the public are expected to use more decent and guarded language and have to be more careful in the selection of words in public gatherings or press conferences so as to show their intellect, maturity of mind and wisdom *qua* respect to various national institutions, and to present themselves, as role model for the society at large.

16. As a sequel of what has been discussed above, and looking to the over all conduct of Mr. Imran Khan, we have no reason to doubt his bonafide or to disbelieve his statement, and all these facts justify our conclusion to discharge the show cause notice, without further calling upon any unconditional/formal apology from him in this regard.

17. Foregoing are the reasons for our short order dated 28.8.2013.

Judge

Judge

Islamabad the
9th October, 2013
Approved for reporting.
Riaz

Judge