

Brij Kishore Mehrotra And Anr. vs G.P. Shrivastava on 23 December, 1955

Equivalent citations: AIR1956ALL417, 1956CRILJ852, AIR 1956 ALLAHABAD 417

JUDGMENT

Desai, J.

1. This is an application by Brij Kishore and Mool Narain for contempt proceedings against Sri G. P. Shrivastava, a first class Magistrate.

2. The applicants, who are brothers, reside In Kanpur City in which they own buildings. One of the buildings was allotted by the Rent Control and Eviction Officer, Sri Saiyid Ullah to an institution in which the wife of the District Magistrate, Kanpur, was interested. The allotment was illegal and this Court on 24-11-1953 quashed it under Article 226 of the Constitution and awarded to the applicants Rs. 200/- as costs against Sri Saiyid Ullah.

It is alleged by the applicants that on account of these proceedings they incurred the displeasure of the executive: authorities in Kanpur district who maliciously started criminal proceedings under Section 8, U. P. (Temporary) Rent Control and Eviction Act, against them on 18-5-1954 in the Court of Sri Saiyid Ullah himself. The accusation made against them in these proceedings was that they failed to intimate that another building of theirs had fallen vacant. It appears that by then another Magistrate had been appointed as the Rent Control and Eviction Officer and it was he who initiated the proceedings against the applicants.

3. On 25-5-1954, Sri Saiyid Ullah ordered the applicants to be summoned for 31-5-1954. On 31-5-1954 both the applicants appeared in his Court. Sri Saiyid Ullah wrote to the Additional District Magistrate, City, that since he had been -Involved in the writ matter in the High Court against the applicants, he did not consider it fair to try the case against them and requested him to transfer it to some other Court.

The same day the Additional District Magistrate transferred the case to the Court of the opposite party. Sri Saiyid Ullah on the same day ordered that the record be sent at once to the Court of the opposite party and that the applicants should file personal bonds for Rs. 200/- each to present themselves in the opposite party's, Court the same day.' In compliance with the order the applicants filed personal bonds for Rs. 200/- each and also presented themselves at once in the Court of the opposite party before noon.

4. The opposite party decided to start proceedings against them at once, though he had as many as sixteen cases already fixed for hearing that day. The case under Section 8, U. P. (Temporary) 'Control and Rent Eviction Act is a summons case and the opposite party asked the applicants to plead to the accusation made against them. He decided to try them summarily and recorded their pleas in the prescribed form and also recorded their statements.

The applicants' counsel made an application) mentioning the setting aside of the allotment order in favour of the Annapoorna Cafetarea and this Court's awarding costs to the applicants against Sri Saiyid Ullah as alleging that on account of these facts the executive authorities in the district were annoyed with the applicants, that the criminal proceedings were started against them in a vindictive spirit and with a view leu exert undue pressure upon them so that they might yield to the allotment and requesting the Opposite party to try them regularly so that a complete record of the proceeding's might be maintained for use if any matter was taken in appeal or revision to the High Court.

The opposite party dismissing the application mentioning that the applicants' statements had, already been taken down on the form of summary trial, that there was no necessity for changing the form, of trial and that a summary trial would not prevent the applicants from going up to the High Court against any adverse order that might be passed against them.

On the application being dismissed the applicants' counsel presented another application for stay of proceedings under Section 526, Cr. P. C., on the ground that the applicants intended to apply to the High Court for transfer. The application was supported by an affidavit which had been' sworn at 10.52 A. M. It seems that the application had been already in the hands of the applicants' counsel from before.

In the application the' displeasure incurred by the applicants on account of their success in the writ matter, Sri Saiyidi Ullah's being saddled with the applicants' costs in the writ matter the initiation of the criminal proceedings against the applicants by the Rent Control and Eviction, Officer without first ascertaining the fact and affording the applicants an opportunity to explain their conduct and their apprehension that on account of the district authorities being biased against them 'they would not get a fair and impartial justice in the Court at Kanpur were mentioned. This application was moved by only Mool Narain applicant and the opposite party ordered him to file a personal bond for Rs. 200/-and adjourned the case to 15-6-1954.

It seems that after passing this order the-opposite party took the applicants into custody and verbally ordered that they would be released on their furnishing a personal bond together with two sureties each of Rs. 500/- each. Each applicant executed a personal bond for Rs. 500/- and produced three sureties against two demanded by the opposite party. One surety bond was executed by Jai Narain, another by Gulab Chand son of Jaggu Mal and the third by Gulab Chand Seth, son of Govind Prasad; each surety bond was for Rs. 500/-. Thus each surety filed two surety 'bonds, one in respect of each applicant.

The bail bonds contained an endorsement by the applicants' counsel that the sureties had the means to pay Rs. 500/- on each bond. Each surety hypothecated a house worth more than Rs. 1000/- in Kanpur. The surety bonds of Jai Narain and Gulab Chand, son of Jaggu Mal, were supported by affidavits to the effect that they were the owners of the houses, that they were free from all incumbrances and that they were worth more than Rs. 1,000/-.

The opposite party did not accept any of the three surety bonds at once in the case of either of the applicants. He did not accept the two surety bonds of Jai Narain on the ground that his claim that he was a Government pensioner should be verified from the Treasury at once and that the house property hypothecated by him cannot be taken into consideration in judging whether he had sufficient means or not and the surety bonds were sent to the Treasury Officer the next day.

The surety bonds of Gulab Chand son of Jaggu Mal were rejected straightway on the ground that no immovable property would be accepted and that "he has no other property which should be fit to cover the risk of such bail bonds". On one surety bond of Seth Gulab Chand the opposite party wrote "Proof?" only and on the other "Proof?" There is no statement by the surety as to his status for his solvency for Rs. 500/- from his movable property. Left some proof be furnished".

On the surety bonds being not accepted, Gulab Chand, son of Jaggu Mal, and Jai Narain Kapoor sureties presented applications that since the opposite party had not accepted their personal security, they were offering cash security of Rs. 500/- in each case. The opposite party rejected the applications saying in one case, "The bail bonds have not been rejected. I have demanded proof. The sureties should submit proof by tomorrow", and in the other. "The bail bond has not been rejected. Hence the question does not arise. It has been put up for verification through Treasury at once". The order passed on the application of Gulab Chand was wrong, because his surety bonds had, been rejected by an express order; proof was required from the other Gulab Chand Seth. The consequence was that the applicants were not released on bail and were sent to jail the same day.

5. The same day the applicants moved an application for bail in the court of the Sessions Judge. He at once passed an order directing the opposite party to "admit them on bail by accepting cash security of Rs. 500". A copy of this order was obtained by the applicants' advocate Sri D. N. Bhargava at about 4.30 p. m. and he accompanied by Sri T.K. Kapoor, Sri B. S. Mehrotra Sri M. Seth and Sri R.S. Gupta advocates, some respectable citizens and paikars of the applicants went to the residence of the opposite party who had returned home from Court by then.

Sri D. N. Bhargava along with Sri T.K. Kapoor went upto the verandah of the bungalow of the opposite party while the others stopped at the gate. Sri D. N. Bhargava inquired of the orderly who informed him that the opposite party was, inside the house. Sri D. N. Bhargava told him to inform him of their visit.

The orderly went inside and returned and inquired about the purpose of their visit. Sri D. N. Bhargava handed over the copy of the order of the Sessions Judge to the orderly to be delivered to the opposite party. The orderly took the copy inside the house and immediately thereafter the light was switched on in the room adjacent to the verandah. Sri D. N. Bhargava saw through a chink the

opposite party standing in the room.

The opposite party read the copy and told the orderly to inform the counsel that it should be taken to him in Court and that Court work was to be done in Court and not at home. The orderly came out on the verandah and communicated the reply to Sri D. N. Bhargava whereupon Sri D. N. Bhargava went to the residence of the Sessions Judge and filed an application! alleging that the opposite party had refused to accept the cash securities.

The Sessions Judge then Passed an order that release warrants be issued at once if cash security had been deposited by the sureties and that the opposite party should be called upon to explain his failure to comply with his order. The sureties furnished cash securities and the Sessions Judge under his signature issued an order for release of the applicants from the jail.

The sureties, etc., reached the jail with the orders at 6.30 p. m. and presented the release order before a jail official. Then it was found that in the warrants under which the applicants were confined to the jail, the name of Brij Kishore was written wrongly as Brij Narain and the section under which they were being prosecuted was wrongly written as Section 420 I. P. C., instead of Section 8, Rent Control and Eviction Act. On account of this discrepancy between the warrants of custody and the release orders the jail official refused to release the applicants. The matter was again brought to the notice of the Sessions Judge next day. He called upon the opposite party to explain the mistakes in the warrants and issued an order to the Superintendent of jail to release the applicants at once notwithstanding the mistakes in the warrants of custody. Accordingly they were released from, jail in the evening of 1-6-1954.

6. The opposite party on 5-6-1954 submitted an explanation to the Sessions Judge denying that his orders passed on 31-5-1954 were ever brought to his notice, alleging that on 31-5-1954 at 4.30 P. M. he had gone to discuss certain matters with the Additional District Magistrate, that it was wrong that he had refused to accept cash security at his house, that the Sessions Judge's order 31-5-1954 did not require him to accept the security at his house or authorise Sri D. N. Bhargava, counsel of the applicants, to take it personally and serve it upon the opposite party and that the mistakes crept in the warrants, of custody owing to the negligence of an official who prepared them and recommending that suitable action be taken against Sri D. N. Bhargava for making an application containing false allegations before the Sessions Judge on 31-5-1954.

When Sri D. N. Bhargava heard about this explanation of the opposite party, he wrote to the Sessions Judge on 15-6-1954 denying that he had made any false allegations against the opposite party in his application to the Sessions Judge.

He maintained that he had taken a copy of the order passed by the Sessions Judge to the residence of the opposite party, that the opposite party had refused to accept it, that he had been accompanied by a number of lawyers such as Sri I. K. Kapoor, Sri D. S. Mehrotra, Sri O.N. Seth and Sri R.S. Gupta, some respectable citizens of Kanpur and pairokars of the applicants.

He repudiated the suggestion of the opposite party that he had made false allegations against the latter to serve some end; he stated that he had no grievance at all against the opposite party, that he was not, related to, or intimate with, the applicants and that his relations with the applicants were merely those of a counsel and client.

He also pointed out that the opposite party had left the Court at about 3.30 p. m. and that he might have gone to discuss matters with the Additional District Magistrate after refusing to accept the copy of the Sessions Judge's order from him (Sri D. N. Bhargava).

In the end he requested the Sessions Judge to make an enquiry into the matter. On 19-6-1954 he filed an affidavit in support of his letter of 16-6-1954. The pairokar of the applicants and the sureties who had accompanied him to the residence of the opposite party also filed affidavit's supporting him.

In a further explanation on 6-7-1954 the opposite party informed the Sessions Judge that he had taken up the case against the applicants at once because the accused were present and other cases fixed for the day were being called out, that he postponed the hearing of the case for some time because he had to attend to an important matter in the retiring room, that he had informed the applicants in the forenoon to arrange for sureties, that on resuming the case at 2.30 p. m. the surety bonds were presented to him, that he was reluctant to allow cash security that as soon as the Rent Control Officer was administered oath as a witness to be examined in the case, Sri D. N. Bhargava gave an application for adjournment of the case under Section 526, Cr. P. C., that in the evening at 6.30 he was informed by 'his peon that certain persons had gone to his house in connection with some official work and that there were khas tattis and not chicks on the doors of his house.

The Sessions Judge then made enquiries from Sri I. K. Kapoor who on 14-7-1954 wrote to mm corroborating what Sri D. N. Bhargava had alleged against the opposite party; he had not gone up to the verandah of the house but had, remained at the gate; he stated that immediately on returning from the house to the gate Sri D. N. Bhargava informed him and others that peon had taken the copy of the order inside the house and had returned and said that the opposite party had ordered that Court work was to be done in Court and not at the house, and that the copy should be produced before him in Court.

The Sessions Judge after completing the enquiry thought that no contempt had been committed by the opposite party. Thereupon the applicants presented the application in this Court for contempt proceedings.

7. The opposite party in his counter affidavit denied the allegations. He denied his presence at the house when Sri D. N. Bhargava took the copy of the Sessions Judge's order to him. He denied having refused to accept it on the ground that Court work was done in Court and not at the house. He admitted having called upon the applicants to furnish two sureties each of Rs. 500/- and ordered the surety bonds to be verified in ordinary course because the sureties were not known to him and in Kanpur surety bonds have been filed by impersonators. He did not deny the rest of the allegations made against him in the affidavit of the applicants.

8. Mool Narain applicant filed a rejoinder affidavit and maintained that the opposite party was at home when he, Sri D. N. Bhargava and others took a copy of the Sessions Judge's order and that he refused to accept it on the ground that Court work was done in Court and not at home.

9. In this Court several affidavits were filed. One is by Bishambhar Nath, an orderly of the opposite party, who affirmed that on 31-5-1954 he went from the Court of the opposite party to his house at 4 p. m. leaving the other orderly Sharda Singh for carrying on work in the Court, that at 5 p. m. a car stopped at the gate of the opposite party's house and two persons alighted from it and came up to the house, that he informed them that the opposite party was not at home and asked them what they wanted, that they replied that they had come for some Court work and went away, that he informed the opposite party on his return at 6 p. m. of their visit and that on that day there were khas tattis and not chinks on the doors. He did not state when the opposite party returned home from the Court and when he left his house to go to the Additional District Magistrate.

This affidavit was sworn on 21-4-55. Another is by the other orderly Sharda Singh who affirmed that he accompanied the opposite party to the residence of the Additional District Magistrate on 31-5-1954 after Court hours and that Bishambhar Nath had left the Court at 4 P. M. for bungalow duty. He did not say when the opposite party left the Court for the house. The court moharrir filed an affidavit stating that he prepared the warrants of custody in a hurry and wrongly put down the name of one applicant and the section under which the applicants were being prosecuted.

Sri D. N. Bhargava filed a detailed affidavit on the same lines as the affidavit filed by him, before the Sessions Judge. The Additional District Magistrate filed an affidavit affirming that the opposite party had gone to see him, on 31-5-1954 at about 4.45 p, m, and had stayed with him for about half an hour. Sri Chakrapan Bajpal, Sri Nirmal Chandra Verma, Sri Hari Krishna Garg and Sri Virendra Swarup Lawyers filed affidavits affirming that they had seen khas tattis on the doors of the opposite party's house,

10. The opposite party is said to have committed contempt of the Court of the Sessions Judge only by refusing to accept a copy of the order of the Sessions Judge requiring him to admit the applicants to bail by accepting cash security of Rs. 500/- from each of the sureties and by not releasing the applicants after accepting cash security.

This contempt is said to have been committed by him at his house. He had denied that he refused to accept the copy of the order and to* comply with it, and pleaded alibi.

Leaving aside for the moment the question of fact whether he was present at his house and refused to accept the copy on the ground that court work was to be done in Court and not at home, I would take up the question of law first and it is whether he Was bound to carry out the orders of the Sessions Judge at home.

Working hours for a Magistrate are from 10.30 a. m. to 5 p. m. and it appears that it was not 5 p. m. when Sri D. N. Bhargava went to the opposite party's house with the Sessions Judge's order. But merely because the Magistrate is required under Government/ orders to work in Court from 10.30 a.

m. to 5 p. m., it cannot be said that he must work as a Court wherever he is between 10.30 a. m. and 5 p. m. All judicial work is required by Rule 10 (2) of Chapter I of the Criminal and Revenue Courts Manual to be taken up and disposed of in open Court.

If a Magistrate is present in the Court from 10.30 a. m. to 5 p. m. he cannot refuse to do judicial work or cannot refuse to comply with an order passed by a superior Court, but if he is in Court before 10.30 a. m. or after 5 p. m. or if he is at his house sometime between 10.30 a. m. and 5 p. m. there is no law or rule which requires him to do judicial work.

He may be guilty of a breach of departmental rules by leaving the Court earlier than 5 p. m. but he cannot be said to commit contempt of Court by not taking action on an order of a superior Court delivered to him at his house before 5 p. m. The order that was passed by the Sessions Judge was to the presiding officer of a Court; it required compliance with it in that capacity.

The opposite party having left the Court, even if too early, cannot be said to be still presiding over a Court when sitting in the drawing room of his (house. The Sessions Judge might have Intended that his orders be complied with at once; that might have been the reason for his handing over a copy of his order to Sri D. N. Bhargava at 4-30 p.m. But he had no power to require the opposite party to act as a presiding officer of a Court at his house. He gave a copy of the order at once to Sri D. N. Bhargava so that if the opposite party was still in Court he could pass necessary orders on it.

But not only is there no law or rule authorising him to require compliance with his orders at [any time and at any place but also there is nothing in the order, to indicate that he required the opposite party, to comply with it at once and 'wherever he was.

It was also not practicable for the opposite party to comply with the order at home. He was Required to accept the cash from the two sureties; he could not comply with the rules in Chapter IX of the Criminal and Revenue Courts Manual regarding deposit? of money and could not be forced to keep the money at his own risk in his house.

Then an order of release of the applicant had to be written out, sealed and sent to the Superintendent, jail, for compliance. There were no facilities for doing his work at home; the seal might not be at home and there may be no peon book at home. Under Rule 99, Clause (c) of the Jail Manual a release order should be sent to the jail after being sealed and being entered in a peon book.

One peon, was there at the house but he might not be available for taking the release order to the jail. On account of these difficulties the opposite party might not have been in a position to comply with the Sessions Judge's order at home and could refuse to do so without thereby committing contempt.

It was argued that even if he could not comply with the order he should have accepted it from Sri D. N. Bhargava instead of returning it and asking him to present it in Court on the next day. He would have been better advised to receive the copy of the order and ask Sri D. N. Bhargava to appear before

him in Court on the next day. It) would, however, have done no good to the applicants if he had simply received the order and taken no action on it; in the circumstances serious notice need not be taken of his indiscretion in not even receiving the order.

It is not correct to say that he was not required to act judicially or as a Magistrate at home; though he had simply to accept the cash security offered to him by the sureties and issue a release order as directed by the Sessions Judge, this act had to be done by him as a presiding officer of the Court. This act could not be done by an official of his Court.

Therefore, he was not wrong in saying that it was judicial work to be done in Court. Sri D. N. Bhargava might have offered to do all ministerial act that the opposite party was required to do and also to carry the release order to the jail but he was not bound to accept his offer. A release order cannot be sent to jail through a private person and that too an agent of the accused to be released. Under R. 99 of the, Jail Manual it ought to be sent through a court peon.

11. A Magistrate or a Judge is entitled to work as such at home; there is no law which compels him to do so, but if he is willing, there is no law to debar his doing so. Therefore, it is a matter entirely at his option; if he likes he can convert himself into a presiding officer of Court at home, or he may refuse to do so.

If he accepts a memorandum of appeal at home on the last day of limitation after Court hours, the appeal must be held to have been presented within the period of limitation, as was decided in -- 'Din Ram v. Hari Das' 9 All LJ 743 (P.B.) (A).

It was pointed out by Richards C. J. in that case at page 748 that the Judge could have refused to receive the appeal out of court hours but did not think fit to do so and received it. A Magistrate does not lose his magisterial powers as soon he leaves the Court; he retains jurisdiction to pass orders under Sections 144, 167 etc., Criminal P. C. after court hours or at home.

In order to compel the opposite party to receive the order of the Sessions Judge at home something more than an option was required; there must at least have been circumstances converting the option into a duty to such an extent that his refusal to accept the order at home would amount to disobedience of it.

A distinction was sought to be made between receipt of an application for bail and receipt of Sessions Judge's order directing release of an under-trial on acceptance of security; I do not think the answer to the question whether the opposite party was bound to act as a Magistrate at home depends at all upon the question what act he is required to perform as a Magistrate.

It was also contended that as he had jurisdiction to act as a Magistrate at home, it became his duty to do so; the contention is unsound. Jurisdiction to do an act is different from the duty to do it; there must be jurisdiction before there arises a duty to do an act, but there must be something besides mere jurisdiction to make it a duty, to do it.

I do not think that the order of the Sessions Judge directing the opposite party to admit the applicants on bail after accepting cash security was sufficient to convert the opposite party's Jurisdiction into duty.

12. There is a distinction between an Injunction or prohibition and a mandamus; an Injunction comes into operation as soon as the person against whom it is issued becomes aware of it; he cannot do the prohibited act. But a mandamus may not come into operation as soon as it is served upon the person against whom it is issued; he must be allowed a reasonable time to comply with it.

No act is required to be done when an injunction is to be obeyed; it is obeyed just by not doing the, prohibited act. But a positive act is required to be done when a mandamus is issued and the person must be allowed sufficient time and reasonable facility. Unless he fails to do the enjoined act in spite of sufficient time and reasonable facility, he cannot be said to have disobeyed the mandamus.

The order issued by the Sessions Judge was in the nature of a mandamus and not an injunction; the opposite party was required to do a positive act and he ought to have reasonable time and facility for doing it. It cannot be contended that he was bound at the moment of receiving the order of the Sessions Judge to accept the cash security and issue an order for release of the applicants and send it to the jail.

-- 'Sati Nath v. Ratanmani', 14 Ind Cas 808 (Cal) (B) was a case of an injunction; a Munsif was prohibited from proceeding with a certain case and yet proceeded with it (presumably on the ground that the injunction had not been served upon him), and the subsequent proceedings were held to be without Jurisdiction and his conduct was held to amount to contempt.

13. it was next contended that every intentional or wilful disobedience of a superior Court's order is contempt, that the circumstances of the case indicate that the opposite party did not want to release the applicants on bail on the same day and that his asking them to 'go to him in the Court on the next day amounted to intentional) disobedience of the Sessions Judge's order.

If there was disobedience, it cannot be doubted that it was intentional and the opposite party would be guilty of contempt; but for the reasons stated above it cannot be said to be a case of disobedience at all. The opposite party did not refuse to comply with the order of Sessions Judge; he only said that he was not bound by any law to comply with it there and then and that under the law he was to comply with it in Court on the next working day.

A mandamus is disobeyed only when the required act is not done at the time when it must be done. There was, therefore, no disobedience by the opposite party of the order of the Sessions Judge. His motive for refusing to receive the order might not have been honourable but as long as he was within his right, he cannot be punished for contempt. A person cannot be punished for contempt unless his guilt is established beyond reasonable doubt.

14. The notice issued against the opposite; party must, therefore, be discharged.

Sahai, J.

15. I agree.

By the Court

16. We discharge the notice issued against the opposite party. Having regard to the circumstances of the case we make no order about costs of the applicants and the opposite-party; and direct the opposite party to pay the fee of the Deputy Government Advocate which we assess at Rs. 200/-.

17. Though we hold that the opposite party did not come within the clutches of the law of contempt we are satisfied that his conduct in the matter from the beginning to the end deserves investigation by the State. The allegations made against him and the circumstances suggest that he has acted in a vindictive manner, that he has gone out of his way to pass illegal orders and that his conduct has been anything but that expected from a responsible Government servant.

In the interests of the State it is necessary to make an inquiry into those allegations and, there fore, we direct that a copy of this order be sent, to the Chief Secretary to Government, Uttar Pradesh.

18. Learned Counsel appearing for the applicants prays that we should certify that this is a fit case for appeal to the Supreme Court. No valid reasons have been shown, for granting such a certificate.

19. The prayer for certificate is accordingly rejected.