

State Of Haryana And Others vs Ch. Bhajan Lal And Another Shri S.A. Khan on 18 December, 1992

Equivalent citations: AIR1993SC1348, 1993CRILJ1042, AIR 1993 SUPREME COURT 1348, 1993 AIR SCW 337, 1993 CRIAPPR(SC) 45, 1993 () IJR 58, 1992 (3) SCR 284, 1994 SCC(CRI) 1762, 1992 (3) CURCRIR 458, 1992 () JT (SUPP) 588, 1993 (1) UJ (SC) 356, (1993) 2 RECCRIR 635, (1992) 3 CRIMES 1104, (1993) 1 ALLCRILR 140, (1993) 1 CHANDCRIC 147, (1993) 1 SCJ 189

Author: S. Ratnavel Pandian

Bench: S.R. Pandian

ORDER

S. Ratnavel Pandian, J.

1. Contempt Petition No. 7 of 1989 is filed by Shri S.A. Khan, DIG of Police requesting the Court to initiate suo moto proceeding for criminal contempt allegedly committed by the respondent/contemner, Ch. Bhajan Lal and to issue notice for the same and punish him adequately.

2. I.A. No. 1/91 in C.A. No. 5412/90 was filed by the applicant Shri S.A. Khan for the following prayers:

(1) award adequate punishment to the respondent Shri Bhajan Lal for committing aggravated contempt of the Authority of this Hon'ble Court by seeking to punish the petitioner (applicant) for assisting the Court through the advocates appearing for the State of Haryana;

(2) set aside the order of suspension of the applicant herein; and also (3) pass such other and further order or orders as this Hon'ble Court may deem fit and proper.

3. LA. No. 2/91 in C.A. No. 5412/90 was filed by the applicant Shri S.A. Khan seeking the following prayers:

(a) set aside the suspension order dated 5.7.91 and fix an early date of hearing of the contempt application No. 2743 of 1989 and the application for direction filed by the applicant earlier.

(b) pass such other order or orders as are deemed fit and proper in the circumstances of the case for which act the petitioner most respectfully prays this Hon'ble Court.

4. IA Nos. 1 and 2 were filed on 12.8.1991 and 21.8.1991 respectively. It may be noted that the Contempt Petition No. 7/89 was filed in September 1989 in S.L.P. (C) No. 14014/88.

5. Even before giving the brief facts which have given rise to the filing of this Contempt Petition, we would like to mention that a confusion is created in the contempt proceeding, by wrongly mentioning it as 'Contempt Petition No. 2743/89' instead of I.A. No. 1/91 in all the follow up affiliated proceedings. 'No. 2743/89' is the number assigned to the Civil Miscellaneous Petition filed in SLP (C) No. 14014/88 which was subsequently registered as Civil Appeal No. 5412/90. The said CMP No. 2743/89 was filed by the State of Haryana and others praying for the deletion of the name of Ch. Devi Lal, Chief Minister of Haryana from the array of parties and dispensation of the filing of a formal affidavit in support of that application. It was not at all a Contempt Petition. It transpires from the original records that I.A. No. 1/91 dated 12.8.91 has been filed in Civil Appeal No. 5412/90 for awarding adequate punishment to the respondent for committing aggravated contempt of court. In the affidavit filed accompanying the petition also it is mentioned as I.A. No. 1/91 in Civil Appeal No. 5412/90, but in the main petition containing the averments, it has been wrongly mentioned as Contempt Petition No. 2743/89 in Civil Appeal No. 5412/90. The mentioning of the number '2743/89' to the Contempt Petition is patently wrong. Unfortunately, this mistake has been carried out throughout the subsequent proceedings, namely, in the counter affidavit, the reply affidavit, the rejoinder and so on. Even at the threshold when we wanted to have a clarification as to how two Contempt Petitions, namely, Contempt Petition 'No. 2743/89' (sic) I.A. No. 1/89 and Contempt Petition No. 7/89 have happened to be filed, no satisfactory explanation has been offered and the puzzle remained unanswered. It may be pointed out that I.A. Nos. 1/91 and 2/91 were filed in Civil Appeal No. 5412/90 praying, (1) for initiating contempt proceedings against Ch. Bhajan Lal; and (2) for setting aside the suspension order dated 5.7.1991 passed as against Shri S.A. Khan respectively. But in both the applications, the facts and the prayers are inextricably mixed up. Therefore, we have culled out the facts with some difficulty by separating them and then have narrated the averments with reference to each proceeding.

6. On 12.11.1987 one Dharam Pal presented a complaint before Ch. Devi Lal, who was then the Chief Minister of Haryana making serious allegations against Ch. Bhajan Lal who was then the Union Minister for Environment and Forests, Govt. of India alleging that Ch. Bhajan Lal had accumulated huge properties worth crores of rupees disproportionate to his known sources of income in the names of his family members, relations and persons close to him by misusing his power and position and also undervaluing the market price and that all those transactions are benami in character. On the basis of the above allegations, a case was registered in Sadar Police Station under Sections 161 and 165 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act of 1947. Even when the investigation was in the threshold, Ch. Bhajan Lal filed a Writ Petition No. 9172/87 under Articles 226 and 227 of the Constitution of India seeking issuance of a writ of certiorari quashing the first information report and also a writ of prohibition restraining the State of Haryana and the investigating officials from further proceeding with the investigation. The High Court of Punjab and Haryana before which the Writ Petition was filed granted exparte stay which

was thereafter made absolute. After hearing the parties to the Writ Petition, the High Court concluded that the allegations made in the FIR did not constitute a cognizable offence for commencing the lawful investigation and granted the relief as prayed for and mulcted the fifth respondent therein, namely, Dharam Pal, the complainant with the costs of the writ petition. On being aggrieved by the judgment of the High Court, the State of Haryana and others preferred SLP (Civil) No. 14014/88 which was registered as Civil Appeal No. 5412/90 on grant of leave. This Court by its judgment dated 21st November, 1990 to which both of us were parties set aside the judgment of the High Court and allowed the appeal in the following terms:

We set aside the judgment of the High Court quashing the First Information Report as not being legally and factually sustainable in law for the reasons aforementioned, but, however, we quash the commencement as well as the entire investigation, if any, so far done for the reasons given by us in the instant judgment on the ground that the third appellant (SHO) is not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of Section 5A(1) of the Prevention of Corruption Act as indicated in this judgment. Further we set aside the order of the High Court awarding costs with a direction that the said costs is payable to the first respondent (Ch. Bhajan Lal) by the second respondent (Dharam Pal).

In the result, the appeal is disposed of accordingly but at the same time giving liberty to the State Government to direct an investigation afresh, if it so desires, through a competent Police Officer empowered with valid legal authority in strict compliance with Section 5A(1) of the Act as indicated supra. No order as to costs.

7. While this Civil Appeal was pending before this Court, Ch. Bhajan Lal is stated to have made a statement touching the proceeding which was then pending in SLP (Civil) No. 14014/88. The substance of the statement was reported in the Indian Express dated 30th July, 1989, the copy of which is annexed as Annexure 'A.' with this Contempt Petition. The relevant portion of the Press statement which according to the applicant, Shri Khan, amounts to contempt of court is reproduced hereunder:

He alleged that the Deputy Inspector General of Police here, who considered himself a big officer, was implicating his people in false cases. He vowed to make him rub his nose on the ground, where the meeting was being held, for forgiveness. Mr. Bhajan Lal had perhaps been provoked by the reports that the said officer was distributing copies of two magazines, both sister publications in Hindi and English, which carried stories about the cases of corruption going on against him in the Supreme Court.

8. According to the applicant, he in his official capacity, was supervising the investigation of the case registered against Ch. Bhajan Lal and was attending this Court (Supreme Court) assisting the Advocate General of Haryana whenever the SLP was fixed for hearing and that his active participation in the proceedings has caused intolerable annoyance to Ch. Bhajan Lal. The applicant further states that Ch. Bhajan Lal "in order to create a bias in his favour, and prejudice the public that he was innocent of the charge of amassing wealth by illegal and corrupt means, has issued

public statements so that this Hon'ble Court does not take the serious charges of corruption against him seriously." The above statement according to the applicant amounts to gross criminal contempt of the court. In addition to the above, the following averments are made in the Contempt Petition:

That the respondent Ch. Bhajan Lal who wants by hook or crook to thwart the proceedings of this Court to ensure no investigation takes place, is adopting the coercive and threatening measures, in interfering with the proceedings of this Court in the above said case.

(Vide para 7 of the Contempt Petition) The matter is sub-judice before this Hon'ble Court. The applicant is not in a position and will not be able to undertake the investigation according to law if the gross contempt committed by respondent Shri Bhajan Lal goes unpunished. It will reduce the law enforcement agencies to a laughing stock. Ch. Bhajan Lal is obviously actuated with an intention to intimidate those who dare to speak the truth exposing his abuse of power to amass wealth in the background of his admittedly humble beginning in life.

(Vide para 9 of the Contempt Petition) That the act of intimidation and blackmail unbecoming of member of the Central Government Ch. Bhajan Lal has committed the gross criminal contempt of this Hon'ble Court with an intention to interfere in the Administration of Justice.

(Vide para 10 of the Contempt Petition)

9. It is pertinent to note that leave was granted in SLP (Civil) No. 14014/88 only on 21.11.1990. In other words, on the date when the alleged contemptuous statement was made on 30th July 1989 leave had not been granted, but the matter was heard at the stage of SLP itself. A reading of the statement which we have reproduced above only the underlined portion can be said to be contemptuous, if at all it is stated so, and the rest of it is the view of the reporter of that news item.

10. One Shri Gian Singh, Under Secretary, Home, Haryana has filed his counter affidavit on behalf of the State in the Contempt Petition stating that the said application is not maintainable "since Shri Khan has no locus standi, inasmuch as he was not a party to the present proceedings either in his personal or official capacity." It is further stated that "Shri Khan has exhibited his personal animosity against the first Respondent by holding a Press Conference on 20.9.1991". A photo copy of the Press statement is annexed to this counter.

11. Ch. Bhajan Lal though has not filed any separate affidavit in the contempt application No. 7 of 1989, he has filed an affidavit in 'Contempt Petition No. 2743/89', (sic I.A. No. 1 of 1991). Ch. Bhajan Lal has replied in his counter affidavit, meeting the allegations, made in LA. No. 1/91 i.e. the application for initiating the contempt proceedings as hereunder:

Having been in political life for a long period of time, I am aware of my responsibilities and would never make any public utterances with the intent of either

scandalising the Court, or of lowering the authority of the Court, or of interfering, either directly or indirectly in the due course of any judicial proceedings, or interfering with, either directly or indirectly, or obstructing, in any manner, the administration of justice.

(Vide para 1 in his affidavit sworn on 6th December, 1991) The statements attributed to me in the Application for Contempt are based on newspaper reports which are mere 'hearsay' and cannot in law be relied upon for the purposes of initiating such proceedings.

Even if it be assumed that the statements attributed to me were so made, it was never with the intent of committing any criminal contempt by either scandalising the Court, or tending to interfere with the course of judicial proceedings, or interfering or tending to interfere with, or obstructing, or tending to obstruct, the administration of justice.

(Vide para 3) I am filing this Affidavit to obviate any doubts which may have arisen in the minds of this Hon'ble Court on the basis of the statements contained in the Application, or any doubts that may have arisen in the mind of the applicant, that I have any personal ill-will or malice against him. I consider it appropriate to place on record my lack of ill-will or malice. This should suffice and lead this Hon'ble Court to believe that the applicant in making the said Application must have done so on the erroneous impression that the deponent was ill-disposed towards him.

(Vide para 5) ...If in the event, this Hon'ble Court chooses to issue notice to me despite the present Affidavit, I reserve liberty at that stage to make my submissions in respect of the specific allegations made.

(Vide para 6)

12. Mr. Khan has filed an affidavit in reply to that of Ch. Bhajan Lal stating that Ch. Bhajan Lal has not denied the statement reported in the Press and that his statement that he vowed to make him rub his nose on the ground amounts to a threat to crush the applicant for assisting the Advocate General of Haryana in SLP (C) No. 14014/88 before the Supreme Court against Ch. Bhajan Lal and it is a gross interference with the administration of justice and that this arrogance act of intimidation and terrorization merits severest punishment. It is further stated that the serious investigation conducted has been reduced to a farce by "purchasing the complainant Dharam Pal, rewarding him with Chairmanship of Khadi Board, procuring final reports alleged to be made on 18th June, 1991 in order to be sworn as Chief Minister on June, 23."

13. All the senior counsel, namely, Mr. R.K. Garg, appearing for the applicant, Shri Khan and Mr. Kapil Sibal appearing for the State of Haryana and Mr. K. Parasaran appearing for Ch. Bhajan Lal articulated their arguments with all seriousness, occasionally punctuated with political overtones. According to Mr. Garg, the very fact that Ch. Bhajan Lal does not deny the truth of the statement

published in the Indian Express itself is sufficient to hold that Ch. Bhajan Lal by making such a statement has scandalised the Court or lowered its authority or interfered either directly or indirectly in the due course of the judicial proceedings or obstructed the administration of justice. In this context, he referred to the proceedings of SLP (Civil) No. 14014/88, the active participation of Mr. Khan in assisting the Advocate General of Haryana before this Court and the passing of the suspension order on 5.7.1991, i.e. immediately after Ch. Bhajan Lal was sworn as Chief Minister on 23rd June, 1991 and seriously urged that all the above factors would establish that Ch. Bhajan Lal made the contemptuous statement only with reference to the proceedings which was then pending before this Court and, therefore, this is a fit case in which this Court should exercise its inherent power in issuing suo moto notice to the contemner, namely, Ch. Bhajan Lal and to adequately punish him.

14. According to Mr. Kapil Sibal, this petition is not maintainable for more than one reason, those being:

(1) Mr. S.A. Khan was neither the investigating officer in the case registered against Ch. Bhajan Lal nor he was a party to that criminal proceedings;

(2) That the statement attributed to Ch. Bhajan Lal cannot be said to have interfered with the proceedings, then pending before this Court, since on that day (that is 30.7.1989) the First Information Report had already been quashed by the High Court and there was no stay of the order of the High Court passed by this Court.

(3) In any case, there is no material on record apart from the newspaper report to show that this statement was made by Ch. Bhajan Lal.

(4) At any rate, the petitioner is not competent to file this contempt petition because he was not a party to the proceedings.

15. Thereafter, Mr. Kapil Sibal drew our attention to a news item that appeared in the issue of 'Times of India' dated 21.9.89 annexed to the counter affidavit of Shri Gian Singh as Annexure "A". The said news item reads that Shri Khan held a Press Conference on 21.9.89 at New Delhi on the strength of a sanction given to him by the then Haryana Government in which he is reported to have said that "if the former Chief Minister of Haryana, Mr. Bhajan Lal had not been given anticipatory bail by the High Court, he would have been behind the bars" and that "he was conscious of the consequences of meeting newsmen" and further said "I am ready for it." The news item, in addition shows that Shri Khan referring to the statement of Ch. Bhajan Lal that appeared in the issue of Indian Express dated 30th July 1989 had said "Mr. Bhajan Lal perhaps provoked by the report that he had distributed copies of the magazines which carried stories about cases of corruption against the former Chief Minister."

16. Mr. Kapil Sibal after taking as through the entire report of the Press Conference, made his incisive argument stating that it is only Shri Khan, who is none other than a bureaucrat has made the scandalising remark against Ch. Bhajan Lal who was then the Minister in the Central Cabinet

and that he had involved himself in picking up the gaunt-let and offering a verbal bout through the media. According to the learned Counsel, if at all any serious action is to be taken, it should be only against Shri Khan for making such a statement of vilification but not against Ch. Bhajan Lal.

17. Mr. K. Parasaran also questioned the very maintainability of this petition by Shri Khan on the ground that the press statement without proof of the contents found therein is inadmissible in law.

18. In support of their respective statements, they relied on a few decisions of this Court which we will presently refer to.

19. Mr. Garg placed much reliance on the decision *In Re. P.C. Sen*, 1969(2) SCR 649. In that case, the Chief Minister of West Bengal broadcast a speech on the All India Radio seeking to justify the propriety of the West Bengal Milk Product Order of 1965. In the course of that speech, the Chief Minister made several comments on controversial matters which were pending for adjudication before the Court. The High Court issued a Rule requiring the Chief Minister to show cause why he should not be committed for contempt of Court and after an inquiry, the High Court held that the speech amounted to contempt of Court. An appeal was filed before this Court challenging the order of the High Court submitting inter-alia that the speech contained no direct reference to any pending proceedings and the Chief Minister was under a duty to make the speech to instruct the public about the true state of affairs. But this Court while rejecting the submission made the following observations:

The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court: *R. v. Gray* 1900 2 Q.B.D. 36 at p. 40. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the mind of the people against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speech or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources.

20. Relying on the above observation, Mr. Garg urged that Ch. Bhajan Lal by his Press statement has not only threatened Shri Khan for implicating his people in criminal cases, but also has interfered with the due course of justice or the lawful process of the court when the proceeding relating to the case of corruption registered against him was pending before this Court. According to Mr. Garg this Press statement clearly amounts to gross criminal contempt of court and therefore it is a proper case in which the Court should exercise its authority by issuing suo moto notice to Ch. Bhajan Lal and

punish him adequately.

21. The bone of contention of Mr. Parasaran is that the statement of fact contained in a newspaper report is merely hearsay and therefore inadmissible in evidence in the absence of any proof by evidence aliunde. According to him, in the present case there is no proof that the alleged contemptuous statement was in fact made by the Chief Minister as it appears in the Press note. According to him, it is only for the applicant to satisfy the court by adducing acceptable evidence that the statement of fact contained in the report is true and that it calls for issue of suo moto notice. According to him, the decision in *In Re: P.C. Sen* cannot be availed of by the applicant because in that case, the evidence was led before the Court to prove that the offending speech was in fact broadcast by the Chief Minister on the All India Radio, Calcutta Station. In support of his submission that the news item cannot be the basis for initiating contempt proceeding against the alleged maker of the statement, he relied upon a decision of this Court in *Samant N. Balakrishna Etc. v. George Fernandez and Ors. Etc.*, wherein it has been held that news items when published are garbled versions and cannot be regarded as proof of what actually happened or was said without other acceptable evidence through proper witnesses. He also drew our attention to the dictum laid down by this Court in *Laxmi Raj Shetty and Anr. v. State of Tamil Nadu*, with regard to the admissibility of the news item appearing in a Press report. The dictum reads thus:

We cannot take judicial notice of the facts stated in a new item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported.

22. In the present case, no evidence has been let in proof of the statement of facts contained in the newspaper report. The absence of any denial by Ch. Bhajan Lal will not absolve the applicant from discharging his obligation of proving the statement of facts as appeared in the Press report. In fact, Ch. Bhajan Lal in his counter affidavit has taken a stand that the statements attributed to him based on the newspaper report are mere hearsay and cannot in law be relied upon for the purpose of initiating such proceedings. Therefore, in the absence of required legal proof, the Court will not be justified in issuing a suo moto notice for contempt of court.

23. As Mr. Kapil Sibal has pointed out when this alleged statement was made, the entire proceedings inclusive of investigation culminating from the registration of the FIR had been quashed by the High Court and no stay has been granted by this Court and that the petitioner was not a party to the proceeding.

24. A perusal of the news item does not spell out any reference to the case of corruption or its proceeding pending before this Court. In the alleged contemptuous statement (Annexure 'A') only the view of the reporter is mentioned as if Ch. Bhajan Lal had perhaps been provoked about the proceedings of the case before the Supreme Court. In fact, the Civil Appeal No. 5412/90 itself has been disposed of on 21st November, 1990 and LA. No. 1/91 is filed in the above main Civil Appeal after its disposal, even though Contempt Petition No. 7/89 has been filed before the disposal of the case. Be that as it may, as we do not see any reason much less compelling reasons to issue suo moto notice to Ch. Bhajan Lal for contempt of court for the reasons mentioned above, as we feel that this petition is liable to be dismissed.

25. In the result, I.A. Nos. 1 and 2 of 1991 and Contempt Petition No. 7 of 1989 are dismissed. No costs.