Pravin C. Shah vs K.A. Mohd. Ali & Anr on 9 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3041, 2001 AIR SCW 4193, 2002 (1) COM LJ 35 SC, 2002 (1) BLJR 275, (2002) 1 COMLJ 35, 2002 BLJR 1 275, 2001 (7) SCALE 60, 2001 (4) LRI 8, 2001 (8) SCC 650, 2002 (1) UPLBEC 140, 2001 (10) SRJ 461, (2001) 9 JT 46 (SC), 2001 (2) UJ (SC) 1542, (2001) 3 ALLCRIR 2751, (2002) 1 EASTCRIC 162, (2001) 3 GUJ LH 745, (2001) 3 KER LT 820, (2002) 1 MAD LJ 55, (2002) 1 MAD LW 563, (2002) 1 PAT LJR 49, (2001) 4 RECCRIR 408, (2001) 5 SCJ 278, (2002) 1 UPLBEC 140, (2001) 7 SUPREME 386, (2001) 7 SCALE 60, (2002) 1 JLJR 96, (2001) 45 ALL LR 776, (2001) 4 ALL WC 3212, (2002) 1 CHANDCRIC 113, (2002) 1 ALLCRILR 65, (2002) 1 CIVLJ 63, (2002) 1 CURLJ(CCR) 236

Bench: K.T.Thomas, S.N.Variava

CASE NO.:
Appeal (civil) 3050 of 2000

PETITIONER:
PRAVIN C. SHAH

Vs.

RESPONDENT:
K.A. MOHD. ALI & ANR.

DATE OF JUDGMENT: 09/10/2001

BENCH:
K.T.Thomas, S.N.Variava

JUDGMENT:

THOMAS, J.

We thought that the question involved in this appeal would generate much interest to the legal profession and hence we issued notices to the Bar Council of India as well as the State Bar Council concerned. But the Bar Council of India did not respond to the notice. We therefore requested Mr. Dushyant A. Dave, Senior Advocate, to help us as amicus curiae. The learned senior counsel did a commendable job to help us by projecting a wide screen focussing on the full profiles of the subject

with his usual felicity. We are beholden to him.

When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt. That question has now come to be determined by the Supreme Court.

This matter concerns an advocate practising mostly in the courts situated within Ernakulam District of Kerala State. He was hauled up for contempt of court on two successive occasions. We wish to skip the facts in both the said cases which resulted in his being hauled up for such contempt as those facts have no direct bearing on the question sought to be decided now. (The detailed facts leading to the said proceedings have been narrated in the two decisions of the High Court of Kerala reported in C.N. Presannan vs. K.A. Mohammed Ali 1991 Criminal Law Journal 2194 and 1991 Criminal Law Journal 2205). Nonetheless it is necessary to state that the High Court of Kerala found the respondent-advocate guilty of criminal contempt in both cases and convicted him under Section 12 of the Contempt of Courts Act, 1971, and sentenced him in one case to a fine of Rs.10,000/- (to be credited, if realised, to the funds of Kerala Legal Aid Board). In the second case he was sentenced to pay a fine of Rs.2,000/-. Though he challenged the conviction and sentence imposed on him by the High Court, he did not succeed in the Supreme Court except getting the fine of Rs.2,000/- in one case deleted. The apology tendered by him in this Court was not accepted, for which a two Judge Bench made the following observation:

> We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the constitution, which we do hereby.
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> The above conviction and sentence and refusal to accept the apology tendered on his behalf did not create any ripple in him, so far as his resolve to continue to appear and conduct cases in the courts was concerned. The present appellant (who represents an association Lalan Road Residents Association, Cochin) brought to the notice of the Bar Council of Kerala that the delinquent advocate continued to conduct cases before the courts in Ernakulam District in spite of the conviction and sentence.
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> The Bar Council of Kerala thereupon initiated disciplinary proceedings against the respondent-advocate and finally imposed a punishment on him debarring him from acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court. The respondent-advocate challenged the order of the State Bar Council in an appeal filed before the Bar Council of India. By the impugned order the Bar Council of India set aside the interdict imposed on him.
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> This appeal, in challenge of the aforesaid order of the Bar Council of India, is preferred by the same person at whose instance the State Bar Council initiated action against the respondent-advocate.

While imposing the interdict on the advocate the Disciplinary Committee of the Bar Council of the State took into account Rule 11 of the Rules framed by the High Court of Kerala under Section 34(1) of the Advocates Act, 1961, regarding conditions and practice of Advocates (hereinafter referred to as the Rules). Rule 11 reads thus:

No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of the contempt.

The above rule shows that it was not necessary for the Disciplinary Committee of the Bar Council to impose the said interdict as a punishment for misconduct. Even if the Bar Council had not passed proceedings (which the Disciplinary Committee of the Bar Council of India has since set aside as per the impugned order) the delinquent advocate would have been under the disability contained in Rule 11 quoted above. It is a self-operating rule for which only one stipulation need be satisfied i.e. the advocate concerned should have been found guilty of contempt of court. The termini of the period of operation of the interdict is indicated by the next stipulation i.e. the contemnor purges himself of the contempt. The inhibition will therefore start operating when the first stipulation is satisfied, and it would continue to function until the second stipulation is fulfilled. The latter condition would remain eluded until the delinquent advocate himself initiates steps towards that end.

Regarding the first condition there is no difficulty whatsoever in the present case because it is an admitted fact that respondent-advocate has been found guilty of contempt of court by the High Court of Kerala in two cases successively. For the operation of the interdict contained in Rule 11 it is not even necessary that the advocate should have been sentenced to any punishment after finding him guilty. The difficulty arises in respect of the second condition mentioned above.

The Disciplinary Committee of the Bar Council of India seems to have approached the question from a wrong angle by posing the following question:

The fundamental question arising for consideration in this appeal is whether Rule 11 of the Rules framed by the Honourable High Court of Kerala under Section 34(1) of the Advocates Act, 1961, is binding on the Disciplinary Committee of the State Bar Council and if not whether the Disciplinary Committee was justified in ordering that on account of the disqualification under Rule 11 the appellant could not be allowed to appear, act or plead till he gets himself purged of the contempt by an order of the appropriate court.

There is no question of Rule 11 being binding on the Disciplinary Committee or any other organ of the Bar Council. There is nothing in the said rule which would involve the Bar Council in any manner. But there is nothing wrong for the Bar Council informing a delinquent advocate of the existence of a bar contained in Rule 11 and remind him of his liability to abide by it. Hence the question formulated by the Disciplinary Committee of the Bar Council of India, as aforequoted, was

unnecessary and fallacious.

In the impugned order the Disciplinary Committee rightly stated that the exercise of the disciplinary powers over the advocates is exclusively vested with the Bar Council and this power cannot be taken away by the High Court either by a judicial order or by making a rule. This is precisely the legal position adumbrated by the Constitution Bench of this Court in Supreme Court Bar Association vs. Union of India and anr. {1998 (4) SCC 409} In fact the relevant portions of the said decision have been quoted in the impugned order in extenso. But having informed themselves of the correct legal position regarding the powers of the Bar Council the members of the Disciplinary Committee of the Bar Council of India embarked on a very erroneous concept when it observed the following:

> But to say that an advocate who had been found guilty of contempt of court shall not be permitted to appear, act or plead in a court unless he has purged himself of the contempt would amount to usurpation of powers of Bar Council.
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> After examining Rule 11 of the Rules the Disciplinary Committee of the Bar Council of India held that there cannot be an automatic deprivation of the right of an advocate to appear, act or plead in a court, since such a course would be unfair and even violative of the fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India. In the end the Disciplinary Committee of the Bar Council of India made an unwarranted proposition on a misplaced apprehension as follows:
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> The independence and autonomy of the Bar Council cannot be surrendered to the provisions contained in Rule 11 of the Rules made by High Court of Kerala under S.34(1) of the Advocates Act.
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> By giving expression to such a proposition the Bar Council of India has obviously overlooked the legal position laid down by the Constitution Bench in Supreme Court Bar Association vs. Union of India (supra). In paragraph 57 of the decision the Bench said thus: In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing professional misconduct, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.
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> Thereafter in paragraph 80, the Constitution Bench said the following:
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> In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to

practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on- Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

When the rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in Prayag Das vs. Civil Judge, Bulandshahr and ors. (AIR 1974 Allahabad 133): The High Court has a power to regulate the appearance of advocates in courts. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practise in courts in various other ways, e.g. drafting and filing of pleadings and Vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of Advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility.

In our view, the legal position has been correctly delineated in the above statements made by the Allahabad High Court. The context for making those statements was that an advocate questioned the powers of the High Court in making dress regulations for the advocates while appearing in courts.

Lord Denning had observed as follows in Hadkinson vs. Hadkinson {1952 (2) All England Law Reports 567}: I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

The observations can apply to the courts in India without any doubt and at the same time without impeding the disciplinary powers vested in the Bar Councils under the Advocates Act.

We have already pointed out that Rule 11 of the Rules is a self-operating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped, though perhaps for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt.

Now we have to consider the crucial question - How can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said

> opinion of the Bar Council of India can be seen from the following portion of the impugned order: Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged off. There is no procedural provision in law to get purged of contempt by an order of an appropriate court.
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> Purging is a process by which an undesirable element is expelled either from ones own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word purge, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and render fit to enter into heaven where nothing defiled enters. (vide Words and Phrases, Permanent Edn., Vol.35A, page
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> 307). In Blacks Law Dictionary the word purge is given the following meaning: To cleanse; to clear or exonerate from some charge or imputation of guilt, or from a contempt. It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

We are told that a learned single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty (vide Dr. Madan Gopal Gupta vs. The Agra University and ors., AIR 1974 Allahabad 39). This is what the learned single Judge said about it:

> In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court.
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> Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is civil contempt which is the willful disobedience of the order of the court including breach of an undertaking given to the court. But criminal contempt includes doing any act whatsoever which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned single Judge in the afore-cited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

This Court has held in M.Y. Shareef and anr. vs. Honble Judges of the Nagpur High Court and ors. (AIR 1955 SC 19) that an apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. Ahmadi, J (as the learned Chief Justice then was) in M.B. Sanghi, Advocate vs. High Court of Punjab and Haryana and ors. {1991(3) SCC 600}, while considering an apology tendered by an advocate in a contempt proceeding has stated thus:

And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer not that the High Court has been harsh with him what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse no regret it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned judge was lying adding insult to injury and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape.

A four Judge Bench of this Court in Mulk Raj vs. State of Punjab {1972 (3) SCC 839} made the following observations which would throw considerable light on the

question before us:

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is aborn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellants expression of apology without any further word. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go away with impunity after having committed gross contempt.

Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

Shri Sadrul Anam, learned counsel for the respondent- advocate submitted first, that the respondent has in fact apologised before this Court through the counsel engaged by him, and second is that when this Court observed that this course should set everything at rest it should be treated as the acknowledgement made by this Court that the contemnor has purged himself of the guilt.

We are unable to accept either of the said contentions. The observation that this course should set everything at rest in the judgment of this Court cannot be treated as anything beyond the scope of the plea made by the respondent in that case. That apart, this Court was certainly disinclined to accept the apology so tendered in this Court which is clearly manifested from the outright repudiation of that apology when this Court said thus: We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the constitution, which we do hereby.

The respondent-advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without being objected by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. We, therefore, direct that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

It is still open to the respondent-advocate to purge himself of the contempt in the manner indicated above. But until that process is completed respondent-advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent-advocate.

This appeal is disposed of accordingly.