Ram Avtar Shukla vs Arvind Shukla on 23 November, 1994

Equivalent citations: AIRONLINE 1994 SC 566

Author: K. Ramaswamy

Bench: K. Ramaswamy

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           CASE NO.:
Special Leave Petition (civil)  17524 of 1991

PETITIONER:
Ram Avtar Shukla

RESPONDENT:
Arvind Shukla

DATE OF JUDGMENT: 23/11/1994

BENCH:
Kuldip Singh Singh & K. Ramaswamy

JUDGMENT:
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JUDGMENT AND Appellants: Ram Autar Shukla Vs. Respondent: Commissioner, Kanpur Division and Ors.

With Suo Motu Contempt Case No. 248 of 1994 1994 Supp(5) SCR 707 JUDGMENT K. Ramaswamy, J.

1. M.L.S. Uchchattar Madhyamik Vidyalaya, Reewan (Sandalpur) Dist. Kanpur Dehat was established by a Committee duly constituted under the Societies Registration Act, 1960. The society has been obtaining renewal from the Assistant Registrar from time to time. Ram Autar Shukla while working as a Manager of the institution, the term of the office of the Committee was to be renewed for 5 years from October 5, 1990. There was a dispute as to who represent the society. The petitioner Ram Autar claimed that he was duly elected as a Manager of the Committee and he was entitled to make an application for renewal, while the case of the respondent was that he was entitled to represent the society as a Manager. Admittedly, the respondent made an application and had obtained orders from the Asstt. Registrar for his functioning as a Manager. The Dist. Inspector of Schools on May 8, 1991 recognised the petitioner as a Manager of the Committee and approved the list of office bearers. The Asstt. Registrar issued show cause notice to the respondent, on an application made by the petitioner, that the respondent had fraudulently fabricated the records and obtained the order. After service of the show cause notice on February 19,1991, though the respondent sought time to file the counter, even after the date was given for filing an affidavit, it would appear that he did not do the same nor has given an explanation. Therefore, the Asstt. Registrar passed an order on February 23, 1991 cancelling the certificate dated October 12, 1990

recognising the respondent as a Manager. He recorded the finding that the renewal was obtained by playing fraud and misrepresentation of facts. On appeal filed by respondent, it was ultimately confirmed by the Commissioner by his Proceedings dated September 16, 1991. The writ petition No. 2111 of 1991 filed by the respondent was allowed by the High Court of Allahabad t and quashed the orders. The petitioner filed the above SLP impleading the officials and the respondents as No. 3 in the SLP. After issuing notice on December 2, 1991 and hearing both the counsel, by order dated May 11, 1992, stayed the operation of the judgment of the High Court On November 24,1992 when it was brought to the notice of this Court that the petitioner was not allowed to function pursuant to the orders passed by this Court on May 11, 1992, due to an order dated June 6, 1992 cancelling the order of stay dated May 11, 1992, a bench of 3 Judges consisting of us and Brother Justice V.Ramaswami prima facie found that the order dated June 9, 1992 was a forged document for the reason that neither Justice T.K. Thommen nor Justice K.J. Reddy who were parties to the original order of stay, were the vacation Judges. Therefore, the cancellation order of the stay by the same learned Judges on June 9,1992 would not arise. Accordingly while confirming the order of stay made by this Court dated May 11, 1992, we directed the functionaries to permit the petitioner to continue as a Manager and directed the Registrar General to hold an enquiry as to who had committed the forgery of the order dated June 9, 1992. The Registrar confirmed in his proceedings dated January 19, 1993 that the order dated June 9, 1992 was a forged order and there is a conflict as to who had. committed the forgery. Therefore, he reported and sought for directions that "in view of the directions of the Hon'ble Court dated November 24, 1992 for such action as the court may deem fit in the circumstances of the case". Thereafter we called for the records and notice was issued to the respondents. We directed the Dist. Inspector of Schools, K... Dehat to be present pursuant to which she was present and produced the records and she was also directed to file an affidavit.

2. In the affidavit filed by the respondent he stated "that the answering respondent has no knowledge of the order dated June 9,1992 allegedly passed by this Hon'ble Court. He has neither filed the said order before the Dist. Inspector of Schools nor he fabricated the signature of the petitioner in accompanying application" etc. Smt. Ramsia Avasti, the Dist. Inspector of Schools, Kanpur Dehat, on the basis of the affidavits of Ramseshwar and Puttanlal, had stated thus: "the stay order dated 9.6.92 in SLP No. 17524/91 was filed by one Sri Arvind Shukla who told his name as Ram Autar Shukla. Later on he came to know that the name of that person was Arvind Shukla and not Ram Autar Shukla. He further stated that he (Arvind Shukla) used to tell his name as Ram Autar Shukla". To the same effect Rameshwar who was working as Daftly as on the relevant date and Puttanlal who was working as class IV employees as on that date have stated that the respondent delivered that order in their office impersonating as Ram Autar Shukla but later they came to know that he is Arvind Shukla. The respondent filed his reply denying those allegations. On August 9, 1994 we passed the following order.That it is established from the record that the alleged interim order of this Court dated 9.6.92 is forged. It is also established that the said order was produced before the Dist. Inspector of Schools by Arvind Shukla. By producing the said order, Mr. Shukla wanted to gain an advantage. Mr. Shukla is, therefore, guilty of forging the order and producing before the Dist. Inspector of Schools. There are two courses open to us i.e. either to file a complaint under Section 197, Criminal Procedure Code or to initiate contempt proceedings against Mr. Shukla. We are of the view that in the facts and circumstances of this case, we should initiate contempt proceedings against him. We issue show cause notice to Mr. Shukla as to why he be no held guilty of

contempt of court and be suitably punished. He may file his reply within six weeks to be listed on 4.10.94". Pursuant to that notice, he filed the affidavit. Therein, while reiterating that he did not commit forgery nor did he produce the forged order of this Court, he stated that he tenders unconditional apology. He is the bread- winner of the family. The conviction of him for contempt would render his aged parents, two minor sons and his house wife destitutes.

3. From the record, it is clear that this Court passed the order on May 11,1992 after hearing both parties suspending the operation of the order of the High Court. On June 9, 1992 during summer vacation, an order was purported to have been passed by the same learned judges cancelling the order dated May 11, 1992. In the affidavit initially filed by the respondent he stated that the petitioner had fabricated the order and he was not to gain anything by fabricating the document or producing the forged document for the reason that subsequently this Court passed an order directing the authorities to permit the petitioner to continue to function as a Manager. He also alleged prevarication by the subordinates, Rameshwar and Puttanlal, class IV employees. It would be clear that they are playing the game according to the exigencies. Initially they stated in the affidavits filed in support of the respondent that the Ram Autar Shukla produced the order dated June 9,1992 and later they categorically stated in the sworn statements before this Court that it was the respondent Arvind Shukla that produced the order dated June 9, 1992 before them and impersonated to be the petitioner. Yet in third affidavits they stated that the above statement was not correct. Be that as it may, the circumstances clearly point to the unerring conclusion that the respondent with the connivance of one of the staff in the Registry, obtained the blank printed format and forged the order dated June 9, 1992 impersonated as petitioner and produced it in the office of the District Inspector of Schools. The petitioner having obtained the stay of the operation of the order of the High Court on May 11, 1992, cannot be expected to produce an order purported to be: dated June 9, 1992 cancelling the order dated May 11, 1992. In fact, the language of the order shows that it is not the court language. The respondent initially obtained an order from the Asstt. Registrar recognising him to be the Manager which was later cancelled on the findings that it was obtained by playing fraud and misrepresentation. When he challenged that order as confirmed ultimately by the Commission, at his instance, he had it quashed by the High Court which was suspended by this Court. Who would stand to gain by vacating the order dated May 11, 1992. The inevitable conclusion would be that it is the respondent that stands to gain and not the petitioner. Therefore, the stand taken by the respondent that it was the petitioner that had fabricated the order dated June 9,1992 and had produced it before the Dist. Inspector of Schools is an obvious absurdity and too credulous to believe. Therefore, the affidavits of Rameshwar and Puttanlal that it was the respondent who produced the order dated June 9,1992 before them impersonating to be the petitioner is consistent with the circumstances and would be acceptable to us. We accordingly confirmed our prima facie conclusion in our show cause notice and hold that the respondent obviously forged the order of this Court and produced it in the office of the Dist. Inspector of Schools, Kanpur Dehat impersonating to be the petitioner to have him reinducted as a Manager of the school.

4. The question then is whether the respondent has committed the contempt of this Court? Section 2(c) of Contempt of Courts Act, 1971, i(for short 'the Act') defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever (1) scandalise or tend to scandalise or lower

or tend to lower the authority of any court; (2) prejudice or interferes or tends to interfere with the due course of judicial proceedings or (3) interferes or tends to interferes with, or obstructs or tends to obstructs the administration of justice in any other manner. Oswald's classic book of Contempt of Court, states that "to speak generally contempt of court may be said to be constituted by any conduct that tends to bring the authority or administration of law into disrespect or disregard or to interfere with or prejudice litigant or the witness during the litigation". C.J. Miller, in his Contempt of Court, 2nd reprint Ed., 1993, has stated at p.3 that English law has long recognised that a criminal contempt may be committed by publishing matter or "indulging in conduct which creates a serious risk or prejudice to the fair trial of particular criminal or civil proceedings, whether through an effect upon the parties, the witness, or the tribunal itself." The Law of Contempt by Anthony Arlidge David Eady, 1982-Ed., commenting on 1981 Contempt of Court Act at p.151, stated that "any conduct calculated to interfere with the administration of justice was a contempt". Calculated means no more than tending to. In comparable common law jurisdiction, in Att. Gen. v. Times Newspaper (1974) A.C. 273 the House of Lords held that any act which raised a real albeit small likelihood of interference with the administration of justice amounts to contempt of court. A recent judgment of this Court dated November 14, 1994, in Chandra Shashi v. Anil Kumar Verma, a bench comprising of one of us, Kuldip Singh, J. was a Member, Learned Brother Hansaria, J. speaking for the bench had held that "the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice". The facts therein where that the respondent produced false and fabricated certificate to defeat the claim of the respondent for transfer of the case. This Court held that "if a forged and fabricated document is filed the same may amount to interference with the administration of justice". It was further held that "obstruction of justice is no interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice". The fabrication and production of false document was, therefore, held to be interference with the due course of justice and by distortion thereof the respondent committed contempt of this Court.

5. The Act deals with any acts or conduct of the parties to the litigation or witnesses "in any manner". The acts or conduct may take different forms including the conduct or acts which may amount in itself a criminal offence or interferes or tends to interfere with course of justice or administration of justice in any other manner. These acts or conduct may be to put an obstacle or tends to obstruction or tends to prejudice the right of the opposite party to the litigation in its result or the effective or efficacious prosecution of the proceedings. The tendency on the part of the contemner in his action or conduct to prevent the course of justice is the relevant fact. To do an act with the intention of preventing the course of justice is not itself enough but the acts must have also that tendency and the acts must have been done with an intent to prevent the course of justice. In P. v. Machin (1980) 3 A E R 151, the facts were that:

> The appellant made a written statement at a police station admitting certain motoring offences. He ten went out of the sanction and, at his request, a friend punched him in the eye causing it to swell. The friend then agreed to give evidence that the police in the station had caused the injury. The appellant told other persons that the police had hit him and his wife lodged a formal complaint to that effect at another police station, The appellant then had a professional photograph taken of his eye injury but did not collect it. He was charged with attempting to pervert the course of public justice.

6. Considering the question whether it amounts to contempt, Eveleigh Lord Justice of Court of Appeal held on page 153-54 thus:

> The particular acts of conduct in question may take many different forms including conduct that amounts in itself to some other criminal offence or attempt threat in the strict sense of an inchoate offence. The gist of the offence is conduct which may lead and is intended to lead to a miscarriage of justice whether or not a miscarriage actually occurs. We therefore respectfully agree that the use of the word "attempt" in the present context is misleading as was said in R.V. Rowell. The word is convenient for use in the case where it cannot be proved that the course of justice was actually perverted but it does no more than describe a substantive offence which consists of conduct which has the tendency and is intended to pervert the course of justice. To do an act with the intention of perverting the course of justice is not of itself enough. The act must also have that tendency.

7. In R. v. Murray 1982 (2) All ER 225 the appellant had tampered with the report of the blood test analysed by the competent authority who found him containing 157 mg alcohol in 10 ml of blood. Whether it amounts to a contempt to prevent the course of justice, Lord Lane, CJ. speaking for the Court of Appeal, held that "in order to prove the offence of attempting to pervert the course of justice it had to be shown not only that the accused intended to pervert the course of justice but also that what he had done, without more, had a tendency to produce that result; and to establish that, it was not necessary to show that the tendency had in fact materialised: it was sufficient if there was evidence that the accused had done enough for there to be a risk, without further action by him, that injustice would result."

8. Any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the majesty of law and, therefore, the conduct is punishable as contempt of court. Law of contempt is only one of many ways in which the due process of law are prevented to be perverted, hindered or thwarted to further the cause of justice. Due course of justice means not only any particular, proceeding but broad stream of administration of justice. Therefore, due course of justice used in Section 2(c) or Section 13 of the Act are of wide import and are not limited to any particular judicial proceeding. Much more wider when this Court exercises suo motu power under Article 129 of the Constitution. Due process of law is blinkered by acts or conduct of the parties to the litigation or witnesses nor generate tendency to impede or undermine the tree flow of the unsullied stream of justice by blatantly resorting, with impunity, to fabricate court proceedings to

thwart fair adjudication of dispute and its resultant end. If the act complained of substantially interferes with or tends to interfere with the broad steam of administration of justice, it would be punishable under the Act. If the act complained of undermines the prestige of the court or causes hindrance in the discharge of due course of justice or tends to obstruct the course of justice or interfere with due course of justice, it is, sufficient that the conduct complained of, constitutes contempt of court an liable to be dealt with in accordance with the Act. It has become increasingly a tendency on the part of the parties either to produce fabricated evidence as a part of the pleadings or record or to fabricate the court record itself for retarding or obstructing the course of justice or judicial proceedings to gain unfair advantage in the judicial process. This tendency to obstruct the due course of justice or tendency to undermine the dignity of the court needs to be severely dealt with to deter the persons having similar proclivity to resort to such acts or conduct. In an appropriate case, the mens rea may not be clear or may be obscure but if the act or conduct tends to undermine the dignity of the court or prejudice the party or impedes or hinder the due course of, judicial proceedings or administration of justice, it would amount to contempt of the court. The acts of the respondent in fabricating the court proceedings purported to be dated June 9, 1992, impersonating himself to be the petitioner and producing the fabricated copy of the court proceedings in the office of the Dist. Inspector of Schools thus constitute contempt of the court. It tended, to interfere with the course of justice in legal proceedings to gain unfair advantage over the petitioner and is not as innocent as pretended to be by the petitioner. Further as we have already held that he alone stands to gain by fabricating the court proceeding and producing it before the authorities for his continuance as a Manager of the School, he had the necessary animus or mens rea to fabricate the court's proceedings impersonated himself to be the petitioner and produced it in the office of the Dist. Inspector of Schools. Thereby, he committed contempt of court.

9. The question then is whether his apology would be acceptable or is liable to be punished. It is seen that his apology in the counter to the show cause notice is only conditional and not an unconditional one. Public interest therefore demands that when a person had interfered with judicial process and fabricated the court's proceedings, impersonated himself to be the petitioner and produced in the office of the competent authority so as to enable him to continue as a Manager of the School, the judicial decision should not be pre-empted or circumvented by mere statement of conditional apology or as a fact even unconditional apology. The unconditional apology should be contrite for the acts committed by him. Therefore, the conditional apology would not be a premium to avoid conviction. Though it is open to the court in an appropriate case to accept an unconditional apology based on factual scenario accepting the apology and dropping the proceeding of contumacious acts deliberately done to over-reach the due process of the law without compunction should amount to a premium to fabricate the court order with impunity. in Asharam M. Jain v. A.T. Gupta and Ors. : 1983CriLJ1499 , the petitioner made scandalous allegations against the Chief Justice of the High Court and without withdrawing those allegations offered an unconditional apology.

This Court did not accept the unconditional apology and convicted the contemner for contempt and sentenced him two month's imprisonment to atone him for his contumacious conduct. Therefore, we have no hesitation to reject the respondent's conditional apology. In view of the fact set out hereinbefore and the finding recorded, it is a grave and contumacious act and conduct on the part of the respondent which cannot be lightly brushed aside. Therefore, we are of the opinion that it is a fit

case that the respondent should be convicted and accordingly convicted under Article 129 of the Constitution and sentenced to undergo rigorous imprisonment for a period of three months. The suo motu contempt petition is accordingly ordered.

Order

10. The Superintendent of Police, Kanpur Dehat is directed to arrest the respondent and consign him to the Central Jail, Kanpur to undergo the sentence of three months pursuant to the conviction ordered in this Petition.