Supreme Court of India
Bal Kishan Giri vs State Of U.P on 28 May, 1947
Author: . B Chauhan
Bench: B.S. Chauhan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 555 OF 2010

Bal Kishan Giri …Appellant

Versus

State of U.P. …Respondent

JUDGMENT

Dr. B.S. Chauhan,J.

1. In this appeal, impugned judgment and order dated 5.2.2010 passed by the High Court of Judicature at Allahabad in Contempt Application (Crl.) No. 15 of 2009, by which the appellant stood convicted for committing criminal contempt under the provisions of Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act') and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.20,000/- and in default to undergo simple imprisonment for two weeks, has been assailed.

2. Facts and circumstances giving rise to this appeal are that: A. An FIR was lodged in P.S. Baleni, District Baghpat on 23.5.2008 by Anil Kumar, appellant in connected Criminal Appeal No. 686 of 2010 alleging that his younger brother Sunil Kumar alongwith Puneet Kumar Giri, who were residing in Sitaram Hostel of the Meerut College, were not traceable and went missing the previous evening. Another inmate of the same hostel Sudhir Kumar was also reported untraceable. The very next day, three dead bodies of the said missing persons were found on the banks of river Hindon. A criminal case was therefore registered.

B. During investigation, it came to the notice of the police authorities that the place of occurrence fell within the territorial jurisdiction of P.S. Kotwali, Meerut, and thus investigation on being transferred to P.S. Kotwali, Meerut, the case was registered as Case Crime No.190/2008.

C. During investigation, many accused persons including one Haji Izlal were arrested. They moved bail applications before the Meerut Distt. Court which stood rejected. Aggrieved, all the accused persons filed bail applications before the High Court of Allahabad. It was on 14.8.2009 during the pendency of the said applications that the appellant submitted an application to the Hon'ble Chief Justice of Allahabad High Court alleging that the accused therein were gangsters and had

accumulated assets worth crores of rupees by their criminal activities. The accused persons were closely related to a local M.L.A. and Ex. M.P. and they had links with the Judges of the High Court including Mr. Justice S.K. Jain who had earlier served as a judicial officer in Meerut Court. The appellant expressed his apprehension that Mr. Justice S.K. Jain would favour the accused persons to get bail. A copy of the said complaint was also sent to the Chairman, Bar Council of U.P.

D. The High Court examined the complaint and placed the matter on the judicial side on 12.11.2009. The court issued a show cause notice dated 14.8.2009 to the appellant as to why the criminal contempt proceedings be not initiated against him under the provisions of the Act.

E. The appellant submitted an unconditional apology dated 21.11.2009 submitting that the application was sent by him as he had been misguided by the advocates of District Meerut and he was in great mental tension as his nephew had been murdered. F. The High Court after completing the trial convicted the appellant vide impugned judgment and order dated 5.2.2010 and awarded the sentence as referred to hereinabove.

Hence, this appeal.

3. Mr. J.M. Sharma, learned senior counsel appearing for the appellant has submitted that the show cause notice was not in consonance with the provisions of Chapter XXXV-E, Rule 6 of the Allahabad High Court Rules, 1952 (hereinafter referred to as the Rules). Thus, all subsequent proceedings stood vitiated. More so, the appellant is a practicing advocate and had written the said complaint under a mental tension as his nephew had been murdered, and on being misguided by the advocates of the Meerut Court. Once the appellant has tendered an absolute and unconditional apology, punishment was not warranted and fine imposed therein is contrary to the statutory provisions of the Act. Thus, the appeal deserves to be allowed.

4. Per contra, Mr. Irshad Ahmad, learned counsel appearing for the State has opposed the appeal contending that very wild and scandalous allegations had been made by the appellant not only against one judge but against various judicial officers and merely tendering an apology is not enough. As the appellant had accepted that he had written the letter and also owned its contents, and filed the reply to the show cause notice issued to him, even if, the statutory rules have not been complied with, the order would not stand vitiated. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The relevant part of the complaint filed by the appellant reads as under:

> "4. That Akhalakh family have good connection with all judges posted at Meerut. Hon. Mr. Justice S.C. Nigam was posted in Meerut in the year 1981 to 1984 and 2002-03 on the posts of Addl. Civil Judge/A.C.J.M. and Addl. District & Sessions Judge respectively. Hon. Justice Mr. S.K. Jain was also posted at Meerut as

> Additional District & Sessions Judge in 2002-03.
>
> 5. That all the Hon. Justices V.K. Verma, S.K. Jain and S.C. Nigam have been promoted as High Court Judges from the cadre of District Judges. Hon. Justice Mr. S.K. Jain and Hon. Justice S.C. Nigam remained posted in Civil Court Meerut as Additional District Judge together in the year 2002-03 and have been promoted from Meerut Judgeship to the cadre of District Judge.

They are very good friends. Hon. Mr. Justice V.K. Verma also has very good intimacy with them. They have made a caucus with V.P. Srivastava, Senior Advocate of Allahabad High Court for granting major bails to known accused in criminal cases illegally and with ulterior motives.

Hon. Justice V.K. Verma has granted bails to two accused namely Rizwan and Wassim in aforesaid famous triple murder case of Meerut in bail application No.924 of 2009 and 1238 of 2009 on 17.7.2009 illegally and with ulterior motives."

7. The appellant/complainant further expressed his apprehension of having no confidence and faith in any of the three Judges of the Allahabad High Court as they could pass any order at the behest of Shri V.P. Srivastava, Senior Advocate.

In sum and substance, the offending part of the allegation had been as under:

> (1) Akhlaq had good relations with Mr. Justice S.C. Nigam from the date since he was posted at Meerut on three terms, (2) that justice V.K. Verma had good intimacy with the family of the accused and the accused have made a clique alongwith one V.P. Srivastava, Senior Advocate of Allahabad High Court for procuring major bails illegally and with ulterior motives. Mr. Justice V.K. Verma has admitted bail to two accused namely Rizwan and Wasim illegally and with ulterior motives. The three Judges (V.K. Verma, S.K. Jain and S.C. Nigam) may pass any order at the behest of V.P. Srivastava, Senior Advocate.

8. The allegations made by the appellant against the 3 judges of the High Court are too serious, scandalous and, admittedly, sufficient to undermine the majesty of law and dignity of court and that is too without any basis. The appellant is a practicing advocate. Plea taken by him that he had been misguided by other advocates is an afterthought. He must have been fully aware of the consequences of what he has written. The averment to the effect that provisions of Chapter XXXV-E of the Rules had not been strictly observed remains insignificant as the appellant had not only admitted transcribing the complaint but also its contents. The appellant had submitted the reply to the show cause notice issued by the High Court of Allahabad on the judicial side. In such a fact-situation, even if, for the sake of argument it is accepted that the aforesaid Rules have not been complied with strictly, we are not willing to accept the case of the appellant for the reason that Mr. J.M. Sharma, learned senior counsel for the appellant could not show as to what was that material which was not considered by the High Court that had been put up as a defence by the appellant resulting in any miscarriage of justice.

9. This Court in M.B. Sanghi, Advocate v. High Court of Punjab and Haryana & Ors., AIR 1991 SC 1834, while examining a similar case observed :

"The foundation of judicial system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society".

10. In Asharam M. Jain v. A.T. Gupta & Ors. AIR 1983 SC 1151, while dealing with the issue, this Court observed as under:

> "The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected; judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected."

11. In Jennison v. Baker [1972] 1 All E.R. 997, 1006, it was observed, "[T]he law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope"

12. The appellant has tendered an absolute and unconditional apology which has not been accepted by the High Court. The apology means a regretful acknowledge or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment

13. Clause 1 of Section 12 of the Act and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it bona fide. A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstructed or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns only at a later stage. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as "paper apology".

14. In L.D. Jaikwal v. State of U.P., AIR 1984 SC 1374, this court noted that it cannot subscribe to the 'slap-say sorry- and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer. (See also: T.N. Godavarman Thirumulpad v. Ashok Khot & Anr., AIR 2006 SC 2007) So an apology should not be “paper apology” and expression of sorrow should come from the heart and not from the pen; for it is one thing to 'say' sorry, it is another to 'feel' sorry.

15. An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the “contrition which is the essence of the purging of contempt”. Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide: Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr., AIR 1969 SC 189; Mulkh Raj v. The State of Punjab, AIR 1972 SC 1197; The Secretary, Hailakandi Bar Association v. State of Assam & Anr., AIR 1996 SC 1925; C. Elumalai & Ors. v. A.G.L. Irudayaraj & Anr., AIR 2009 SC 2214; and Ranveer Yadav v. State of Bihar, (2010) 11 SCC 493).

16. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (Vide: Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC 710; The Bar Council of Maharashtra v. M.V. Dabholkar etc., AIR 1976 SC 242; Asharam M. Jain v. A.T. Gupta & Ors., AIR 1983 SC 1151; Mohd. Zahir Khan v. Vijai Singh & Ors., AIR 1992 SC 642; In Re: Sanjiv Datta, (1995) 3 SCC 619; Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors., AIR 2008 SC 3016; and Vishram Singh Raghubanshi v. State of U.P., AIR 2011 SC 2275).

17. That the power to punish for contempt is a rare species of judicial power which is by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where “silence is no longer an option.” (See: In re: S. Mulgaokar AIR 1978 SC 727; H.G. Rangangoud v. M/s State Trading Corporation of India Ltd. & Ors., AIR 2012 SC 490; Maninderjit Singh Bittav. Union of India & Ors., (2012) 1 SCC 273; T.C. Gupta & Anr. v. Hari Om Prakash & Ors., (2013) 10 SCC 658; and Arun Kumar Yadav v. State of U.P. through District Judge, (2013) 14 SCC 127) Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.

18. Being a member of the Bar, it was his duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been leveled by a practicing lawyer against three judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the judges of High Court not only causes agony and anguish to

the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by members of Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse.

19. In view of the above, we are of the considered opinion that the High Court has not committed any error in not accepting the appellant's apology since the same is not bona fide. There might have been an inner impulse of outburst as the appellant alleges that his nephew had been murdered, but that is no excuse for a practicing lawyer to raise fingers against the court.

20. Section 12(1) of the Act provides that if the court is satisfied that contempt of court has been committed, it may punish the contemnor with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs.2,000/-, or with both.

Section 12(2) further provides that "notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it." Thus, the power to punish for contempt of the court is subject to limitations prescribed in sub-section (2) of the Act.

21. Hence, in view of the above, the fine of Rs.20,000/- imposed on the appellant by the High Court by way of impugned judgment and order, is reduced to Rs.2,000/- and is directed to deposit the said fine forthwith.

22. We find no force in the appeal which is accordingly dismissed. The appellant must surrender to serve out the sentence forthwith, failing which, the learned Chief Judicial Magistrate, Meerut, would secure his custody and send him to jail to serve out the sentence. A copy of the order be sent to the learned Chief Judicial Magistrate, Meerut, for information and compliance.

.....J.

(Dr. B.S. CHAUHAN) .....J.

(A.K. SIKRI) New Delhi, May 28, 2014 IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. 686 OF 2010 Anil Kumar ...Appellant Versus State of U.P. ...Respondent JUDGMENT Dr. B.S. Chauhan,J.

In view of the judgment passed today in connected Criminal Appeal No. 555 of 2010, this appeal is dismissed. However, the fine of Rs.20,000/- imposed on the appellant by the High Court by way of impugned judgment and order, is reduced to Rs.2,000/- and is directed to deposit the said fine forthwith.

The appellant must surrender to serve out the sentence forthwith, failing which, the learned Chief Judicial Magistrate, Meerut, would secure his custody and send him to jail to serve out the sentence. A copy of the order be sent to the learned Chief Judicial Magistrate, Meerut, for information and

compliance.

.....J.

(Dr. B.S. CHAUHAN) .....J.

(A.K. SIKRI) New Delhi, May 28, 2014