

Shikha Kanwar vs Rajat Kanwar on 7 April, 2025

Author: Prathiba M Singh

Bench: Prathiba M. Singh, Amit Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th

+ CONT.CAS.(CRL) 15/2023

SHIKHA KANWAR

Through: Ms. Pinky Anand, Sr. Adv.
Rosemary Raju, Mr. Adhars
Ms. Sitwat Nabi, Advs.

versus

RAJAT KANWAR

Through: Mr. Sanjay Dewan, Sr. Adv.
Anish Dewan, Ms. Garima V
Mr. Ayush, Ms. Kashish Ja
Liza M. Barwah & Ms. Hars
Goel, Advs. for Contemnors
with the Contemnors in per

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M Singh, J.

1. This hearing has been done through hybrid mode.
2. A matrimonial dispute between the Petitioner- wife and the Respondent- husband has turned into an ugly spat between the counsel for the wife and the husband. This case demonstrates the same.
3. The present petition has been filed by the Petitioner-wife under Article 215 of the Constitution of India read with Section 2(c) of the Contempt of Courts Act, 1971 seeking initiation of criminal contempt proceedings against the Respondent and awarding him a punishment of six months of imprisonment.
4. Vide judgment dated 29th July, 2024, this Court has already held that the Respondent is guilty of criminal contempt under the Contempt of Courts Act, 1971. Some relevant extracts of the judgment are set out below:-

"14. The Court has perused all the three affidavits. It is clear from a reading of the said three affidavits that the allegation of the Contemnors/Respondent is that the Counsel for the Petitioner had demanded money from him to settle the dispute. If

that was the position, the proper course of action for the Respondent/Contemnor was to approach the concerned Court or the concerned regulatory body such as the Bar Council for appropriate action. If the Respondent had any grievance against the Counsel, the proper course of action of filing a complaint ought to have been adopted. It is completely impermissible for the Respondent to hurl abuses in Court during proceedings. There was no occasion for the Respondent to cause a commotion in the Court and demean the proceedings before the Court by using abusive language in the Court, not just against the Counsel for the Petitioner but making aspersions even against the Court.

15. The exasperation of the Id. Judge in the Family Court is quite clear from the fact that the Id. Judge had to even transfer the matter from her Court to a different Court. As has been recorded in the order dated 15th September, 2023, the language which has been used by the Respondent in the Court is completely uncalled for and impermissible.

16. Despite previous incidents and a police complaint, the Respondent's conduct has continued unabated. The petition, submissions and the Respondent's behaviour in this Court have highlighted the Respondent's contemptuous behaviour, which interferes with the administration of justice. It is incumbent upon the Courts to check such actions and behaviour of the parties with a firm hand which otherwise it will have pernicious consequences.

17. Moreover, the Respondent in his conduct even before us shows that he does not abide by or pay any heed to the orders passed by this Court. Even after having agreed to pay the sum of Rs.15 lakhs, today, on the face of the Court, the Respondent has stated that even if he gives the cheque, the same would not be encashed and the cheque would bounce back.

18. This conduct of the Respondent is completely reprehensible and cannot be tolerated by any Court, let alone the Family Court or the Division Bench of the High Court.

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20. In view of the above decision of Supreme Court, it is clearly laid down that the, that immediate action is warranted for contempt committed in the face of the Court to maintain its dignity, noting that failure to do so would lower the Court's dignity in public eyes. Additionally, any altercation of the Court records, as in the Appellant's case therein, constitutes criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971, warranting strict judicial response.

21. In view of the circumstances of the case as also the judicial precedents, the Respondent is clearly guilty of criminal contempt as per the Contempt of Courts Act,

1971 and it is ordered accordingly."

5. On the aspect of sentencing, the Court has heard Ms. Pinky Anand, ld. Sr. counsel appearing on behalf of the Petitioner as also Mr. Dewan, ld. Sr. counsel appearing on behalf of the Respondent.

6. The submission on behalf of the Petitioner wife is that the highest punishment of six months imprisonment ought to be given to the Respondent. It is argued that the nature of allegations made against the lawyers show that the Respondent does not deserve any leniency.

7. Ld. Sr. counsel appearing on behalf of the Petitioner submits that the Respondent's wilful misconduct and contemptuous behaviour has directly obstructed the administration of justice, as is evident from the pendency of the Petitioner's application under Section 24 of the Hindu Marriage Act, 1955, i.e. for maintenance, which was fixed for arguments on 15 th September 2023, but remains undecided till date.

8. It is further submitted that the Respondent's disruptive and scandalous conduct in open court on 15th September 2023, is the highest degree of contempt. It has not only delayed the proceedings but also forced the recusal of the ld. presiding Family Court Judge, resulting in the transfer of the said case. The deliberate and continuous obstruction caused by the Respondent has deprived the Petitioner of a timely decision on her application for interim maintenance and litigation expenses, thereby causing her financial hardship and undue delay in securing judicial relief.

9. Ld. Sr. counsel for the Petitioner relies upon the decision of the Supreme Court in *Leila David (6) v. State of Maharashtra*, (2009) 10 SCC 337 wherein it has been held that interference with pending judicial proceedings and deliberate obstruction of justice warrant strict and deterrent punishment to preserve the sanctity of the legal system.

10. The case of the Petitioner is that the conduct of the Respondent has scandalized the authority of the Court, interfered with the course of judicial proceedings, and obstructed the administration of justice, thereby meeting all the prerequisites for criminal contempt. The conduct of the Respondent has casted direct aspersions on the impartiality and integrity of the judiciary.

11. In respect of the affidavit dated 10th August, 2024, filed by the Respondent, apologizing for his conduct before the Court, ld. Sr. counsel for the Petitioner submits that the Respondent has obstructed the administration of justice by filing a non-bona fide affidavit of apology, which was clearly a mere formality to evade punishment rather than a genuine act of remorse. The Respondent has demonstrated persistent non-compliance, a lack of remorse, and open defiance of judicial authority and hence the said affidavit cannot be treated as a mitigating factor. Applying the established legal test for determining appropriate punishment in contempt cases, it is argued that there are no mitigating factors that warrant any leniency towards the Respondent.

12. Furthermore, it is submitted on behalf of the Petitioner that in paragraph 6 of the said affidavit the Respondent has stated that he has not committed any contempt and defended his action whereas in paragraph 12 of the same affidavit, he tenders an unconditional apology.

13. Ld. Sr. counsel for the Petitioner further submits that the Respondent has not tendered an apology for the specific acts of contempt he has committed. An apology in contempt proceedings must be unequivocal, specific, and reflective of genuine remorse, and it must directly address the contemptuous conduct. However, the Respondent has failed to offer an unconditional and specific apology for his disruptive behaviour in court, his scandalous allegations against the judiciary, and his repeated defiance of court orders.

14. Reliance is placed upon the decision of *M. C. Mehta v. Union of India* (2003) 5 SCC 376 wherein the Supreme Court has observed that an apology tendered by the Respondent at a belated stage is to escape punishment of the Court. It is also submitted that the Supreme Court has repeatedly held that the absence of remorse is an aggravating factor in contempt cases, justifying strict punishment.

15. Ld. Sr. counsel for the Petitioner also submits that the Respondent has repeatedly engaged in contemptuous conduct before various courts, displaying disruptive and intimidating behavior. The Respondent has repeatedly attempted to intimidate court officers, disrupt proceedings, and obstruct justice, which have led to judicial warnings, police action, and even the recusal of a presiding judge.

16. Reliance is also placed upon the decision of the Supreme Court in *Ram Niranjana Roy v. State of Bihar & Ors.*, (2014) 12 SCC 11, wherein it has been held that the intemperate language used by a litigant while addressing the learned Judges of the High Court is objectionable and contumacious. The same was held to be scandalous and obstructing the administration of justice.

17. Ld. Sr. counsel for the Petitioner further relies upon the decision of the Supreme Court in *Pritam Pal v. High Court of M.P.*, 1993 Supp (1) SCC 529. The relevant portion of the judgment reads as under:

"63. Coming to the question of sentence, it appears from the order of the High Court that the appellant had adopted a defiant attitude and tried to justify the aspersions made by him even without thinking it necessary to apologise. Before this Court also, the appellant has neither expressed any contrition nor has he any repentance for the vicious allegations made against the learned Judges of the High Court. But on the other hand, he has exhibited a dogged determination to pursue the matter, come what may. A reading of his memorandum of grounds and the written and signed arguments show that he has ventured into another bout of allegations against the High Court Judges and persisted in his campaign of vilification. His present conduct has aggravated rather than mitigated his offence."

18. On behalf of the Respondent, it is submitted by the Ld. Sr. counsel that the quantum of sentence ought to be imposed bearing in mind the fact that the Respondent is merely a frustrated husband who is facing several proceedings.

19. Ld. Sr. counsel appearing on behalf of the Respondent submits that vide affidavit dated 10th August, 2024, the Respondent has tendered an apology to this Court against his contemptuous behaviour and against the derogatory statements made by him.

20. Further, the Id. Sr. counsel submits that in furtherance of the order dated 5th July 2024, the Respondent has duly made a payment of Rs. 15,00,000/- towards the outstanding maintenance payable to the Petitioner and approximately Rs. 5,00,000/- towards the pending school fees of his minor children. The Respondent further in compliance of the order dated 11th February 2025, has duly paid the sum of Rs. 3,50,000/- through RTGS bearing transaction number PSIBR25049102052 towards maintenance of the Petitioner on 18th February 2025.

21. Moreover, in compliance with the order dated 12th August 2024, the Respondent has duly cleared the outstanding CBSE school fees for the minor children on 18th February 2025 and has also paid the transportation fees amounting to Rs. 2,34,949/- and Rs. 2,03,754/- for both the children on 24th February 2025.

22. Ld. Sr. counsel further submits that an affidavit dated 9th September 2024 was filed before this Court regarding certain property documents allegedly stolen by the Petitioner and instead of addressing the specific averments, the Petitioner filed a vague reply and made extraneous allegations to divert the attention of this Court. Additionally, it is urged that a perusal of the records would establish that the documents submitted by the Petitioner before various forums are not in the public domain and could only be in custody of the Petitioner. The Petitioner has also annexed the Respondent's private diaries, unsigned Board Resolutions pre-dating the marriage, an Agreement to Sell, and other confidential documents. Thus, it is the Respondent's stand that the Petitioner is harassing him by taking away his valuable documents and still has all the originals which she is refusing to return. Instead of addressing the said issue, the Petitioner has attempted to divert the Court's attention to sentencing.

23. According to the Respondent, he is the sole bread earner of his family. The Respondent is presently living with his aged father i.e. Mr. Subhash Kanwar, who is aged about 83 years old. The Respondent's father is suffering from several health conditions and is completely dependent upon the Respondent for his day-to-day needs. The Respondent if sentenced would be unable to support not only his old father but also would be unable to pay the school fees and other expenses to the Petitioner and the minor children.

24. Submissions have been heard on sentencing. On the aspect of sentencing, in terms of Section 12 of Contempt of Courts Act, 1971, the imprisonment can extend to a period of six months with fine up to Rs.2,000/-. The relevant provision is extracted as under:

"12. Punishment for contempt of court.-- (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. Explanation.--An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any 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."

25. While awarding sentence, the Court has to take into consideration various aspects including the nature of the contempt which is committed, the extent of contempt as also the mitigating factors, if any.

26. In the present case, the contempt arises out of a matrimonial dispute between the Petitioner and the Respondent. There are a large number of cases pending between the parties and most of these cases have been instituted by the wife i.e. Petitioner. The details of the proceedings pending between the parties are set out below:

Case No. / FIR Provision Date of Filed By Status No. filing Ct Cases U/s 12 20.7.2021 Petitioner Pending 910/2021 Protection of Women from Domestic Violence Act, 2005 HMA No.994 of U/s 13 r/w 27.08.2021 Petitioner Pending 2021 S.24 The Hindu Marriage Act, 1955 CONT.CAS(C)- U/s 10, 11 21.12.2021 Petitioner Pending 991/2021 and 12 of Contempt of Courts Act, 1971 FIR U/s 379 01.08.2021 Respondent Stayed by No.0861/2021 at Indian (through Mr. Allahabad PS. Noida Sector Penal Arvind Chawla, High Court 49 Code, 1860 Director of in Radical Arc Application Ventures) No. FIR No. U/s 384, 11.11.2021 Respondent Closure 1066/2021 at PS. 380 & 504 Report Noida Sector 49 Indian dated Penal 15.01.2023 Code, 1860 FIR No. U/s 498(A) 20.12.2016 Petitioner Pending 1146/2016 at PS. & 506 Banjara Hills Indian Penal Code, 1860 F.C.O.P No. U/s 13(1) 31.01.2017 Petitioner Dismissed 139/2017 (ia) r/w S. as not 26, The Pressed Hindu Marriage Act, 1955 CS(OS)-122/2023 Respondent 20.02.2023 Respondent Pending claims certain properties purchased by them in the name of Petitioner, GP No. 85/2023 U/s 25, 12.09.2023 Respondent Pending Guardian and Wards Act, 1890

27. There are repeated orders passed by the ld. Family Court as well as by this Court in respect of payment of maintenance. The Respondent has not fully complied with the said orders. However, it would be relevant to point out that initially when the matter was taken up, various settlement proposals were handed over by the Respondent and finally vide order dated 5th July, 2024, settlement was recorded. After the said order, though there has been some delay on part of the Respondent, but it appears that the Respondent has broadly complied with the settlement terms.

28. The reason why the Respondent has been convicted under the Contempt of Courts Act, 1971 is due to the comments passed by him against the counsels of the Petitioner and his misbehavior in Court. Various incidents had taken place during the Court proceedings both in the High Court and in the Family Courts, though, this Court is of the opinion that the entire blame cannot be put on the Respondent. There appears to be some circumstances which have provoked him to such behavior. If there were any allegations against the counsels for the Petitioner, the Respondent ought to have adopted the proper course of action. Hurling abuses in Court would not be permissible. This Court

also faced an enormous challenge in impressing upon the Respondent that he ought to fully comply with the orders passed by the Court.

29. On the last date of hearing i.e. 25th February 2025, when the judgment was reserved, the Respondent tendered an apology and the Court could notice a change in the behavior of the Respondent.

30. During the course of the proceedings in this contempt it appears that the Respondent may have understood the impact of his conduct. He has not attempted to justify his conduct on the last date of hearing. There are various obligations on the Respondent including payment of maintenance to the Petitioner as well as payment of school fee of his minor children which he has to adhere to. He has tendered an apology vide affidavit dated 10th August, 2024 which is reproduced below:

"I at Rajat Kanwar, S/o Subhash Kanwar aged about 49 years, R/o D-129, Sector-47, Noida, presently at New Delhi do hereby solemnly affirm and declare on oath as under:

1. That I am the Respondent in the captioned matter and, therefore, am competent to depose to this affidavit.

2. This Hon 'ble Court has posted the matter for sentencing, having found me guilty of contempt, I humbly accept the verdict and offer my unconditional apology and contrition for my behaviour, and will purge the same in the manner thought fit by this court.

3. I further make a solemn declaration that I shall not cross the bounds of appropriate behavior during any proceedings and shall confine myself to legal submissions and pleadings.

4. As a first step towards reformed behavior, I state that I am paying Rs.15,00,000/- (Rupees Fifteen Lacs Only) in complete compliance of Order dated 05.07.2024 passed by this Hon'ble Court, vide 5 Demand Drafts. The details of the Demand Drafts are as follows; Demand draft hearing number 433668 drawn on Union Bank for an amount of Rs.3,00,000 (Rupees Three Lacs Only), Demand draft bearing number 508155 drawn on Punjab National Bank for an amount of Rs. 1,00,000 (Rupees One Lac Only), Demand Draft bearing number 508154 drawn on Punjab National Bank for an amount of Rs. 1,00,000 (Rupees One Lac Only), Demand Draft bearing number 102555 drawn on Punjab and Sind Bank for an amount of Rs. 5,00,000 (Rupees Five Lacs Only), and Demand Draft bearing number 006754 drawn on Axis Bank for an amount of Rs.5,00,000 (Rupees Five Lacs Only)

5. I completely and absolutely apologise for my conduct found culpable by this Hon'ble Court and I have been brought to realise that such behaviour is unacceptable under any circumstance. I also apologise for my inability/failure to comply with the

Order dated 05.07.2014 until now, by making the aforesaid payment without further demur.

6. Certainly not as a justification, but merely by way of an explanation, I may say that the disruption of my domestic life, separation from children, and disruption of my work by the removal of all my personal property files as well files belonging to my clients and the consequent losses in business and financial difficulty had led to a distorted perception of things in my mind and had a role in my conduct, however I do take responsibility for the same, and will correct it immediately.

7. Seeing the wisdom of advice received, I have now realised the error of my ways.

8. I am highly and deeply grateful to this court for mediating the matter and the counselling sessions.

I hope the sessions can lead to a fruitful and peaceful resolution, I shall fully cooperate with the same. I request this Hon'ble Court to let the mediation continue.

9. In furtherance of the proposed settlement, I state that I tried to called the Petitioner in compliance of Order dated 05.07.2024 to discuss the options of flats for her residence on rent and visited Defence Colony on 24.07.2004.

10. I am making this payment in compliance of the order dated 05.07.2024. I pray that this Hon'ble Court may permit this payment without prejudice to modification of later and future payments as may result from the pending Application before the Ld. District Court, Saket.

11. The present affidavit may be taken on record without prejudice to any of my legal contentions and pending litigations

12. I unabashedly, totally and unconditionally apologise for all and any offence caused to the dignity of any court. I undertake not to exceed the Bounds of proper behaviour in the future and to limit all my actions legitimate pleas taken in litigation.

13. While ready and willing to purge the contempt found by this court, I request for leniency and pardon in sentencing as this is my first and only offence. I pray accordingly to this Hon'ble Court."

31. This Court is conscious of the frustration and exasperation of parties, especially, in matrimonial disputes as their entire personal life comes to a standstill and they also experience emotional trauma. In such cases, human tendencies cannot be ignored by the Court. Lawyers also have a great responsibility in such matters not only towards their own client but also towards the Court and towards the society as well. Peace and tranquility are extremely necessary. Lawyers ought to advise clients towards resolution of disputes rather than making and fueling allegations against each other.

Allegations in such matters could be taken extremely personally which could lead to clients misbehaving with opposing counsels, though the same cannot be justified in any manner. Finally, however the conduct of litigants in such matters cannot cross the boundaries which are prescribed in law.

32. Bearing in mind the background of this matter and the remorse expressed by the Respondent, as also the mitigating circumstances such as his ailing father, this Court admonishes the Respondent to ensure that in future such conduct is not repeated and directs him to tender an oral apology to the ld. counsel for the Petitioner in front of the Court.

33. In addition, the Respondent shall ensure that he shall continue to pay the maintenance and the school fee of his minor children as directed by the competent Court.

34. Apart from the admonishment and the apology, the Respondent shall also pay costs of Rs.1,00,000/- to the Petitioner.

35. It is also observed by the Court that in future, if there is any misconduct or misbehavior by the Respondent, the conviction in this contempt petition would also be liable to be considered by the Court, in any future proceedings.

36. Subject to the adherence to the above conditions, the contempt notice is discharged.

PRATHIBA M. SINGH JUDGE AMIT SHARMA JUDGE APRIL 07, 2025 dj/ck