

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

CONTEMPT PETITION (CRIMINAL) No.12 of 2013

BETWEEN:-

IN REFERENCE (SUO MOTU)

.... PETITIONER

*(SHRI ASHISH SHROTI – ADVOCATE APPEARS AS AMICUS
CURIAE AND SHRI S.S. CHOUHAN – GOVERNMENT ADVOCATE
FOR THE STATE)*

AND

DR. N.S. POONIA S/O SHER SINGH POONIA R/O
PATIALA HOUSE, 68, VISHNUPURI MAIN,
INDORE (M.P.)

.... RESPONDENT

(BY SHRI ABHINAV SINGH THAKUR – ADVOCATE)

CONTEMPT PETITION (CRIMINAL) No.4 of 2018

BETWEEN:-

IN REFERENCE (SUO MOTU)

.... PETITIONER

*(SHRI ASHISH SHROTI – ADVOCATE APPEARS AS AMICUS
CURIAE AND
SHRI S.S. CHOUHAN – GOVERNMENT ADVOCATE FOR THE
STATE)*

AND

**DR. N.S. POONIA S/O SHER SINGH POONIA R/O
PATIALA HOUSE, 68, VISHNUPURI MAIN,
INDORE (M.P.)**

.... RESPONDENT

(BY SHRI ABHINAV SINGH THAKUR – ADVOCATE)

Reserved on : 20.09.2023

Pronounced on : 06.10.2023

*These contempt petitions (criminal) having been heard and reserved for orders, coming on for pronouncement this day, **Hon’ble Shri Justice Vishal Mishra** passed the following:*

ORDER

These *suo motu* contempt proceedings have been initiated against respondent – Narinder Singh Poonia as per the order given by the then Hon’ble Acting Chief Justice dated 09.07.2013.

2. For effective adjudication of the instant petitions, the facts leading to initiation of the proceedings are required to be dealt with in a nutshell. It is undisputed that the respondent was the Founder & Editor and Publisher of a journal titled as ‘Lost Justice’. He had published certain articles in the journal ‘Lost Justice’ in Volume 03 Issue No.03 of July to September, 2010, making allegations against certain sitting Judges of this Court, indicating and commenting about the manner in which certain cases were decided by them on the judicial side. Finding the publication to be amounting to contempt of court, after due approval of the Acting Chief Justice on 09.07.2023, suo-motu

proceedings have been initiated against the respondent under Section 2(c)(i) and (ii) of the Contempt of Courts Act, 1971.

3. The comments which have been published in the said journal clearly scandalize the image of the judiciary and High Court Judges in the State of Madhya Pradesh.

4. On notice being issued, a detailed reply has been filed by the respondent on 16.09.2013 denying the allegations. It is contended by the respondent that he has not committed any contempt neither civil nor criminal. At the same time, I.A. No.21216 of 2013 was filed seeking reopening of all the cases in the matter which are under the reference of Concr. No.12 of 2013. Vide order dated 04.02.2016, this application as well as ten other applications were rejected on merits.

5. Thereafter, vide order dated 17.01.2018 passed in Concr. No.12 of 2013, it was found that the charges as contemplated under Section 15(2) of the Contempt of Courts Act, 1971 have not been framed against the respondent. Therefore, the charges have been framed so as to enable the respondent to answer each one of them. The same reads as follows :

1. "Whatever reached HC was judicially killed paving path for Hoarders around the country. Questionable rulings were relied to generate questionable judgments and it should continue. The menace should extend to all the essential commodities and those around the country." (page 181)

2. "This is how system as a whole protects and promotes crime, money-grabbing, property-grabbing, hoarding, black-marketing, market-inflation and everything which crushes the poor public." (page 181)

3. *“Essential Commodities Act, 1955 (ECA-1955) was flouted by 57 dealers in every manner. Courtesy, senior advocates who appear on behalf of offenders only to mislead the court, the government advocates who gain more by keeping their mouths shut and the HC Judges who can even argue-&-generate evidence in favour of offenders.” (page 182)*
4. *“This seniormost Judge of MPHC at Jabalpur (Justice RS Garg on behalf DB) created a disastrous foundation of giving a clean chit to who was an outlaw in every respect- a 'judgment' which influenced the junior colleagues even at other benches of the court.” (page 183)*
5. *“Performance of justice RS Garg (at Jabalpur) and of Justice S.S.Dwivedi (at Gwalior) tarnished the image of MPHC and of the judiciary from where ascertained offenders escaped at the expenses of public rights- those rights which got demolished and humiliated.” (page 183)*
6. *“Most effortful Justice Dwivedi deserves to be impeached for his overall performance. One Judge is not more important than nation as a whole, and a Judge (Justice RS Garg) after retirement is also accountable being still richly nourished by the nation.” (page 183)*
7. *“Strange are the ways of advocacy. Books say advocates are officers of the court whose only function is to assist administration of justice but, instantly, every senior advocate of the State deployed his professional skill to shield the richly paying offenders by misdirecting the very issue, to mislead and influence the HC Judges.” (page 183-184)*
8. *“For this Judgment, the author would not blame Justice SS Jha. As junior-companion of Justice RS Garg in the DB he must have nothing to do except to sign on the order passed by his senior, in fact, almost very junior of Justice Garg has been doing that.” (page 192-193)*
9. *“Justice RS Garg – the most frequently transferred Judge of Indian High Courts- has shown this judicial “responsibility”*

when he was acting Chief Justice and around his days of retirement after 15 years of service. What made him walk over so many rules in Order 2009 and to ignore (i) mandate of licence for traders (Clause 3), (ii) The limit of 15 days for applying the licence (Clause 4) even when sugar of the petitioner stood seized after the deadline for licence-application was also over, and (iii) Consequences of contravening the terms of the licence-Clause 8 which provides also for prosecution. How amendment of 29.8.09 alters all the provisions of Order 2009? Was it the crown-&-title of the person (Trader or no Trader) which was to decide, or, the circumstance reflecting his acts as per ECA 1955? (page 195)

10. "His jurisprudence as senior judge of the DB traveling through single benches of MPHC must prove disastrous for country as a whole. This author possesses more data about quality of "justice delivery" by Justice RS Garg in the past including his article 2009. 3 Lost J 222-30 during service tenure of the latter. There is no reason which such retired functionaries should be kept richly nourished by the same nation of which he demolished the interests-&-rights during his tenure of service, and, for times to come. In the matter of full relief to sugar-hoarders in MP, administration and Judiciary are both accountable." (page 195)

11. "Subsequently at the Indore bench, this point stood raised towards the disposal of 33 criminal revisions and, in the matter referred by the single bench, the DB (Criminal Reference Nos. 1 to 33/2010) decided in the negative. The verdict runs as under:

"In view of the foregoing discussion, we answer the reference in the negative by holding that for confiscation proceedings mens rea is not at all as essential ingredient. Competent authority has to proceed for confiscation if the conditions prescribed under section 6A of the ECA, 1955 are fulfilled. Let the papers be placed before the learned single judge along with

this order for decision of the criminal revisions on merit in accordance with law.” (page 201)

12. *“Again the same Judge, Justice S.S.Dwivedi, decided this bunch of petitions, too. The same type of justice was delivered as for Bunch No.1. In fact, more energy was spent for shielding the offenders and for creating the evidence. Instead of passing a suo motu order for prosecution of the petitioners under sec. 8(1) of the Order 2009, their confiscated material was directed to be returned with 5% interest in case the sugar was already auctioned. There was overall protection for the petitioners despite the judgment being also self-conflicting.” (page 202)*

13. *“How far it is wrong to impeach such a Judge? A prudent analyst wonders as to why at all a High Court should do so much of mental exercise to disprove a proved case that, too, for giving a clean chit to offenders who were offenders in visible terms. Such a big body of Bar in the State is not sitting with eyes and ears closed. In fact, the 57 beneficiaries must have already talked to thousands of those in the society about the manipulations in getting judicially de-hooked from herein. Judicial corruption as answer gets into the mind of every body and most understand even that it irreparably hits the image of a High Court and of the judiciary in general. The author would say, besides the speculations of judicial corruption, there has been a strong element of judicial incompetence, too.” (page 207-208)*

14 *“Judgment of the DB at Jabalpur Bench was also not a binding on the Single Bench at Indore. Firstly, within the group circumstance for the bunch of 35 petitioners differed widely and then clearly different from that associated with just one party reviewed at Jabalpur. If at all jurisprudence of the Single Bench was in collision with that of the DB then the bunch of cases should have been referred to a Full Bench. Moreover, basic issues stood vanished in the very case decided by the Jabalpur Seat and this vacuum kept dragged for cases at Gwalior as well as at Indore.” (page 217)*

6. The aforesaid charges were read out and explained to the respondent and he was asked whether he wishes to say anything else. He pleaded not guilty. His plea was recorded. Since the publication is admitted, therefore, opportunity was granted to him to produce evidence, if any, in support of his defence. In pursuance thereof, on 16.08.2019, statement of the respondent was recorded and by the order dated 01.11.2019, the submission of the accused was recorded to the effect that he does not want to file any evidence by way of an affidavit but reserved his right to file a written statement.

7. It is pertinent to note here that vide order dated 17.01.2018 passed in Concr. No.12 of 2013, as the respondent has filed numerous documents after initiation of contempt proceedings, the office was directed to examine the documents which have contemptuous comments disclosing criminal contempt so as to initiate a separate criminal proceedings in respect of all documents which disclose criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971. In compliance thereof, the documents have been examined and three documents were found which have contemptuous comments. Accordingly, a separate contempt petition (criminal) has been registered as Concr. No.04 of 2018 which is also being decided by this common order.

8. The statement of the contemnor has been recorded on 16.08.2019, however, vide order dated 20.09.2023, learned counsel for the contemnor submitted that he withdraws all his pleadings with regard to merits of this petition. He only submitted that his

unconditional apology may be accepted as the contemnor is aged about 85 years and is suffering from serious ailments.

9. The question that arises for consideration before this Court is whether the comments made by the respondent with respect to the judgments passed the Hon'ble Judges of High Court of Madhya Pradesh come under the preview of definition of 'criminal contempt' as defined under Section 2(c) of the Contempt of Courts Act, 1971 or not.

The relevant provision is as under :-

“Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

10. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

11. Perusal of the charges which have been levelled against the respondent virtually amount to attempting to scandalize the image of the court and the functioning of the court. It further maligned the image and repute of Hon'ble Judges of the High Court and tends to lower the majesty of this Hon'ble Court. It appears that the respondent being the Editor has made comments upon the judgments passed by the Hon'ble Judges of the High Court of Madhya Pradesh. The said comments are not in the nature of a mere fair and dispassioned critique of the judgments but are couched in intemperate language with use of undesirable expletives. As per charge no.6 above, it is expressed that the Hon'ble Judge deserves to be impeached for his overall performance. It has been expressed that the rights of the public have been demolished and humiliated. Thus, it was a deliberate attempt made by the respondent-contemnor to scandalize the image of the court which clearly falls under the definition of 'criminal contempt' under Section 2 (c) of the Contempt of Courts Act, 1971.

12. Recently, the Hon'ble Supreme Court in the case of Prashant Bhushan and another, in Reference Suo Motu Contempt Petition (Cri.) 1 of 2020 decided on 14th of August, 2020, reported in (2021) 1 SCC 745 has considered the definition of Section 2(c) of the Contempt of Courts Act, 1971 and has held as under:

"It could thus be seen, that it has been held by this Court, that hostile criticism of judges as judges or judiciary would amount to scandalizing the Court. It has been held, that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or

judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed, that any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court.”

13. Further, the Hon'ble Supreme Court in the case of D.C. Saxena (Dr) vs. Hon'ble The Chief Justice of India reported in (1996) 5 SCC 216 deprecated the growing tendency to scandalise the court, which by itself constituted 'contempt of court'. The Court observed thus:

“40. Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into

contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.”

14. A Constitution Bench of the Hon’ble Supreme Court in the case of Baradakanta Mishra vs High Court of Orissa reported in (1974) 1 SCC 374 has held as under:

“49. Scandalisation of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a judge. (See Queen v. Gray), [(1900) 2 QB 36, 40] or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will have also to

consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.

50. But if the attack on the Judge functioning as a judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities. A judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function.”

15. From the aforesaid judgments of the Hon’ble Supreme Court and the definition provided under Section 2(c) of the Contempt of Courts Act, 1971, it is apparently clear that even an attempt to scandalize or lower the authority of a Court falls under the definition of ‘criminal contempt’.

16. Looking to the articles in question published by the respondent-contemnor coupled with the definition of the ‘criminal contempt’, the act done by the respondent-contemnor clearly falls under the definition of ‘criminal contempt’. Under these circumstances, he is held guilty of ‘criminal contempt’ as defined under Section 2(c) of the Contempt of Courts Act, 1971 and, therefore, is liable to be punished under Section 12 of the Contempt of Courts Act.

17. Heard on the question of punishment.

18. On being asked to address on the question of quantum of punishment to be awarded to the contemnor, the learned counsel appearing for the contemnor has submitted that he withdrew all his pleadings with regard to merits of this petition and has tendered unconditional apology on his behalf to this Court. It is submitted that his unconditional apology may be accepted as the contemnor has been suffering from serious ailments. It is submitted that the age of the respondent-contemnor is 85 years. He is virtually bedridden and is suffering from paralysis as has been shown in the medical report given by the doctor. He has been diagnosed with unilateral hemiplegia (one sided paralysis) and has suffered loss of speech due to multiple cerebral strokes. It is argued that considering the age as well as the health condition of the contemnor coupled with the fact that he is tendering unconditional apology before this court, he may not be sent to jail, rather he may be imposed sentence of fine instead of imposing jail sentence.

19. Considered the arguments advanced. The age of the respondent-contemnor is 85 years and he is bed ridden. The doctor has observed in his report that the contemnor is unable to walk and has suffered paralysis of right arm and right leg and has slurring of speech. The applications seeking his exemption from personal appearance were allowed vide order dated 20.09.2023. Considered from the totality of the facts and circumstances as narrated above, the age of the respondent-contemnor and his present health condition, we are of the view that it would be just and appropriate to impose a punishment of payment of fine.

20. For all the aforesaid reasons, we pass the following order :
- (i) The respondent-contemnor is held guilty of having committed a criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971.
 - (ii) The respondent-contemnor shall pay the fine of Rs.4,000/- (Rs.2000/- each towards these two contempt proceedings) before the Registry of this Court within a period of fifteen days from the date of this order, failing which he is directed to undergo simple imprisonment of ten days. He is further warned to remain cautious in future.
21. Accordingly, these contempt petitions are disposed off finally.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

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