

## **Case Comment: Het Ram Beniwal & Ors v. Raghuveer Singh & Ors.**

*- Aman Kadri and Srishty Bajaj\**

Citation: AIR 4940 (2016)., 4 SCC 340 (2017).

Bench: Anil R. Dave, L. Nageswara Rao

Author: L N Rao

### **I Summary of Facts:**

- On 18.12.2000 a prominent trade union activist Shri. Darshan Koda of Ganganagar District was murdered and few accused of that case were granted anticipatory bail by the Hon'ble High Court of Rajasthan in February, 2001.
- Agitated by the same, the appellants belonging to the Marxist communist party addressed a huge gathering in front of the Collectorate at Sri Ganaganagar on 23.02.2001. While addressing the gathering, the appellant made very disrespectful and scandalous statements against the order of the Hon'ble High Court which were published in the newspaper Lok Sammat on 24.02.2001. The Appellants accused the Hon'ble High Court and the entire Judicial System of being corrupt and being biased towards rich and influential people.
- The Respondent Raghuveer Singh after taking the permission of Advocate General Filed a contempt petition in the Hon'ble High court of Rajasthan. It was alleged by the respondent that the appellants by making baseless allegation of bias and corruption against the judiciary they tried to destroy the public confidence in judiciary.
- The Appellants denied all the allegations and stated that they only were agitating for the appointment of another competent lawyer as public prosecutor in the murder case and they never made any remarks on the judiciary and stood by the remarks made by them.
- The Hon'ble High Court After scrutinizing all the factual evidences held the Appellants guilty of criminal contempt and punished them to imprisonment of two months and a fine of Rs. 2000/- each under Section 12 of the Contempt of Courts Act, 1971 (*hereinafter referred to as 'the Act'*).

- The Hon'ble Supreme Court upheld the decision of the High Court as the statements made by the appellants were made to lower the authority of the court and changed the punishment to a fine of Rs. 2000/- each.

## **II Issue Raised**

Whether the Statements Made by The Appellants during the Public Gathering On 23.01.2001 Amount To Criminal Contempt?

## **III Analysis of The Case in The Light of The Provisions of Law Involved**

### **Section 2 (C) (I) Of the Contempt of Court Act, 1971**

*"2. Definitions. In this Act, unless the context otherwise requires,*

*(c) "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;"*

Section 2 (c) defines the word criminal contempt. A disorderly conduct of a contemnor that causes serious damage to the institution of justice administration amounts to contempt. Such conduct can be categorised on the basis of its adverse effects and consequences under two heads: (i) one, where it has a temporary effect on the system and/or the person concerned, such that will fade away with time; (ii) other, where it causes permanent damage to the institution and to the administration of justice<sup>1</sup>.

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\* Aman Kadri and Srishby Bajaj are students at Institute of Law, Nirma University.

<sup>1</sup> Kalyaneshwari v. Union of India & Ors., 12 SCC 599 (2014).

Any conduct attributing improper motive to a Judge or any scurrilous abuse to a Judge will amount to scandalising the court under Section 2(c)(i) of the Act 1971<sup>2</sup>.

Any speech tending to influence the result of a pending trial - civil or criminal - is a conduct of grave contempt. Such comments on pending proceedings from the concerned parties or their lawyers are generally a more serious contempt than those from any independent sources<sup>3</sup>.

- **Relation to the case:-**

In the present case the allegations made by the appellants in the public gathering on 23.02.2002 regarding corruption and biasness towards rich people on the Hon'ble High Court and the entire judicial system would come under the ambit of criminal contempt under Section 2(c)(i) of the Contempt of Courts Act, 1971.

As the baseless statements made by the appellants regarding corruption and biasness are not only derogatory but also have the propensity to lower the authority of the court. Such accusation of corruption on the judges of high court result in denigration of the institution which lowers the confidence of the public in the judiciary.

### **Section 5 of the Contempt of Court Act, 1971 & Article 19 (1) (A) Of the Constitution of India**

*"5.Fair criticism of judicial act not contempt.*

*A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided."*

*Article 19 of the Constitution of India*

*19. Protection of certain rights regarding freedom of speech, etc. -*

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<sup>2</sup> Rajesh Kumar Singh v. High Court of Judicature of M.P., AIR 2725 (2007).

<sup>3</sup> State of Haryana & Ors. v, Bhajan Lal & Anr., AIR 1348 (1993).

*(1) All citizens shall have the right –*

*(a) To freedom of speech and expression;<sup>4</sup>*

Section 5 of the Act, protects a person or a newspaper for his fair criticism on the merits of the case which has been heard and finally decided. It states that a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

The judgment which is a public document or which is a public act of a Judge concerned with administration of justice is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him<sup>5</sup>.

The right of criticising, in good faith in private or public, a judgment of the court cannot be exercised with malice or by attempting to impair the administration of justice. Indeed freedom of speech and expression is —life blood of democracy” but this freedom is subject to certain qualification. An offence of scandalising the court per se is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society<sup>6</sup>.

- **Relation with the Case:-**

In the present case the defendant claimed the defence of fair criticism and the fundamental right to speech and expression under Section 5 of the Contempt of Courts Act, 1971 and under Article 19 (1) (a) of the constitution respectively. But both of these provision are subject to certain restrictions and contempt of court is one of them.

Here the appellants by making baseless and unsubstantiated allegations on the judiciary of corruption indulged in an assault on the integrity of the judges of the high court and the entire judicial system. Due to the following reasons the appellants are not entitled to seek shelter under

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<sup>4</sup> The Constitution of India, 1949.

<sup>5</sup> Perspective Publication v. State of Maharashtra, AIR 221 (1971).

<sup>6</sup> Narmada Bachao Andolan v. Union of India, AIR 3345 (1999).

Section 5 of the Contempt of Court Act, 1971 and their right to speech expression has not been violated.

### **Section 12 (1) Of The Contempt Of Court Act, 1971**

*“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.”*

Section 12 (1) provides the power to the court to punish person for contempt of court for a maximum imprisonment of 6 months or with a maximum fine of Rs. 2000/- or with both. The Proviso clause of Section 12 (1) states that a person may be discharged or the punishment can be reduced if a satisfactory apology is provided by that person.

- **Relation with the case:-**

In the present case the appellants provided an apology to the Hon’ble Supreme Court and pleaded to be discharged from punishment but their pleading was rejected by the Hon’ble Supreme Court as the apology should always be made in a bona fide manner and at the earliest possible time but here the appellants provided the apology when all their contentions failed and it was only provided just to dodge the punishment. This was inferred by the court by referring to the response given by them to the contempt petition in the Hon’ble High Court where they stood by the statements made by them and did not render an apology for their misconduct.

### **IV Arguments from The Appellants**

- The Learned Counsel on behalf of the appellant Mr. Prashant Bhushan argued that the appellants were in distressed mood because of murder of Mr. Darshan Koda, a trade union activist and also due to mishandling of the criminal case by the court as the court had granted anticipatory bail to the accused. So the statements attributed by the appellants only portrays fair criticism over improper administration, thereby not lowering down the value of judiciary and it won't amount to contempt of court.
- Mr. Bhushan also highlighted that the statement attributed by the one of the appellant, Mr. Hardeep Singh was taken by the court in different context. Mr. Singh was attributing the statement regarding money's influence to the working of authorities and police force, not on the working of the judiciary.
- Mr. Bhushan also argued that the statement attributed by MCP leader Mr. Bhuramal Swami, one of the appellant, who took the name of the judge who granted anticipatory bail and accused judiciary of being partial to rich people, does not amount to contempt.
- Mr. Bhushan also relied upon precedents by taking the help of the 2010 case law *Indirect Tax Practitioners Association V. R.K Jain*<sup>7</sup> wherein it was said by the Hon'ble Supreme Court that "the courts should not be sensitive to fair criticism".
- The Appellants also contended that the power of punishing for contempt has to be exercised sparingly and not in a regular manner.

## **V Arguments from The Respondents**

- The Learned Amicus Curiae on behalf of the respondent Mrs. Aishwarya Bhati submitted that Rajasthan High Court had dealt with all the evidences in detail and there is no need for the Hon'ble Supreme Court to interfere in that. These evidences were regarding the statements made by appellants which on the face of it looked contemptuous, the editor of the newspaper lok sammat also confirmed that the statements were published scrupulously and correctly and the appellants also did not deny making the same but they stood by what they had said in the public gathering of 23.02.2001.
- She also submitted that the High Court took into consideration the press conference organized by Sheopat Singh and third appellants on 15.5.2002 and the affidavits of 5 journalist and one

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<sup>7</sup> Indirect Tax Practitioners Association v. R. K. Jain 8 SCC 281 (SC: 2010).

deed writer who were eye witnesses of the public gathering of 23.02.2001 to verify the statements made by the appellants.

- Then she also relied upon the judgement of *Bal Krishna Giri v. State of Uttar Pradesh*<sup>8</sup> where the Hon'ble Supreme Court said that, "vituperative comments undermining the judiciary would amount to contempt".
- She also relied upon the case of *Vijay Kumar v. Union of India*<sup>9</sup> to show that apology was only made to avoid punishment and not in a bona fide manner and also referred to the affidavits submitted by the appellants which clearly demonstrated that the appellants do not show any genuine repentance.
- She also argued that an apology by the appellants should have been tendered at the earliest opportunity and it should have been unconditional and in a bonafide manner and not to avoid the punishment.

## **VI Judgement**

- The court dismissed the petition and held that the appellants are in fact guilty of criminal contempt of court but they limited the punishment only to the fine of Rs. 2000/- considering peculiar facts of the case and that the statements were made in 2001.

### **i. Ratio Decidendi**

1. According to Section 12 (c)(1) of the Act statements made by a person transgressing all the boundaries of decency and scandalizing or lowering the authority of the court cannot be termed as fair criticism and such person cannot seek shelter under Section 5 of the Contempt of Courts Act, 1971.
2. Contempt of Courts Act, 1971 is one of the restrictions imposed on freedom of speech guaranteed under Article 19 (1) (a) of the Constitution.
3. According to explanation of Section 12(1), an apology should not be rejected only because it is qualified or at a belated stage and to be accepted by the court it should be in a bona fide manner and without any kind of malice.

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<sup>8</sup> Bal Krishna Giri v. State Of Uttar Pradesh, 7 SCC 280 (2014).

<sup>9</sup> Vijay Kumar Singh v. Union of India, 16 SCC 460 (2014).

**ii. Obiter Dicta**

1. The court was concerned that the power to punish for the contempt of court should be used in a restricted manner and not frequently.

**VII Status of The Judgement**

The present status of the judgement is that the judgement is standing as a benchmark for all the future Contempt Cases in the Country.

**VIII Conclusion**

- After a detailed analysis and discussion of the judgement, I have come to the conclusion that the decision of the Hon'ble Supreme Court is appropriate as the statement made by the appellants who are the members of the Marxist communist party in the gathering of their party workers on 23.02.2001 cannot be considered as 'Fair criticism' because they were clearly made to scandalise and lower the authority of the court. The appellants made all these allegations regarding corruption and biasness towards rich people without any proof and only to degrade the image of the judge who is considered as the administrator of justice and thus affected the confidence of the public in the justice administration system.
- Also their denial of the allegations of making any comments about the Judge and the justice system and sticking to what they had said while replying to the contempt petition in the Hon'ble High Court and then apologizing for the same in the Hon'ble Supreme Court, left their apologies with no substance and made them just for the sake of reducing the punishment. Due to all these reasons the apology rendered by the appellants were not in good faith and due to which they were not allowed to seek shelter of the proviso clause of Section 12 (1) of the Contempt of Courts Act, 1971.
- Thus the decision of the Hon'ble Supreme Court of Upholding the Judgement of the Hon'ble High Court is completely appropriate. But the Hon'ble Supreme Court upheld the judgement with some modifications in the punishment where it reduced the punishment from 2 months imprisonment and Rs. 2000/- fine each to just a fine of Rs. 2000/- each just on the rationale that the statements were made in the year 2001 and nothing else.



- We do not agree with the rationale given by the Hon'ble Supreme Court for reducing the quantum of punishment that just because the statements were made in the year 2001 and the year of passing the judgement is 2016 the quantum of punishment can be reduced. Moreover the appellants have not spent any time in the prison after the judgement of High Court so the principle of Double Jeopardy would not also apply. Further the reduction of punishment itself against the rationale given by the Hon'ble Supreme Court for upholding the judgement of Hon'ble High Court.
- The purpose of giving punishment to a person is to create a deterrent effect in the mind of the general public so that the crime is not repeated again and in the case of *Bhagat Ram Singh v. State of Himachal Pradesh*<sup>10</sup> it was said by the Hon'ble Supreme Court that, "Penalty should be Proportionate to the Gravity of Misconduct otherwise it would be violative of Article 14 of the constitution". Here a mere fine of Rs. 2000/- would not be able to satisfy the purpose of awarding punishment as it won't be able to create a deterrent effect in the mind of general public because anyone would go on to make any kind of defamatory statements against the judiciary and would go free by paying just a mere fine of Rs. 2000/.
- Thus, it is humbly submitted that the decision of the Hon'ble Supreme Court to reduce the Punishment to a mere fine of Rs. 2000/- is not appropriate and the Hon'ble Supreme Court should have been more strict while awarding the punishment.

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<sup>10</sup> Bhagat Ram v State of Himachal Pradesh AIR 454 (1983).