

State Vs. Harihar Shukla

State Vs. Harihar Shukla

SooperKanoon Citation : sooperkanoon.com/465801

Court : Allahabad

Decided On : Nov-21-1975

Reported in : 1976CriLJ507

Judge : H.N. Seth and; G.D. Srivastava, JJ.

Appellant : State

Respondent : Harihar Shukla

Judgement :

H.N. Seth, J.

1. Sri Jagdish Singh, Judicial Magistrate Kasia made a report to this Court and requested that Sri Harihar Shukla Advocate Kasia, be punished for committing contempt of his court. In due course this Court issued notice to Sri Harihar Shukla, requiring him to show cause why he should not be (punished for committing contempt of Judicial Magistrate's court. On 17th September 1975, Sri Shukla filed an affidavit denying that he did anything which amounted to contempt of Judicial Magistrate's court. The Magistrate concerned was accordingly asked to send his comments with regard to facts stated in Sri Shukla's affidavit. The Magistrate has sent his comments in that regard.

2. Facts as they emerge from the report of the Magistrate, affidavit of Sri Shukla and Magistrate's comments thereon, in brief are that on 14-12-1972 Sri Harihar

Shukla lodged a first information report at .police station Turkpatti, Facts stated in that report made out that Qashirn and others had committed an offence under Section 379, I.P.C. In due course the police investigated the case and submitted a final report, Sri Shukla filed an objection before the court praying that the anal report submitted 'by the jollier 'be not accepted, On 14th June 1973. Sri Jagdish Singh. Judicial Magistrate Kasia disapproved the final reports and, acting under Section 190(1)(c) of the Cr.P.C. took cognizance of an offence under Section 395, I.P.C. and summoned the accused Qashim and others for 25th of July 1973. He also directed the Assistant Public Prosecutor to conduct the case. Qashim and others went up in revision before the Sessions Judge Deoria and objected to the aforesaid order passed by the Magistrate..

Sessions Judge Deoria, by his order dated 25th September 1973, rejected the revision application holding that the Magistrate had ample' power to take cognizance of the offence under Section 190(1)(c) of the Code and that the discretion exercised by him in asking the A.P.P. to conduct the case could not be interfered with. Thereafter, on 30-12-1973, the Magistrate issued summons requiring the accused persons¹ to appear before him on 30-1-1974. As on that date the accused did not appear he fixed 21st February 1974 as the next date and issuedailable warrants for their airest. It appears that as neither the summons nor the warrant issued by the Magistrate were received 'back and none of the accused appeared before the court on the 21st February 1974, the Magistrate fixed 30th March 1974 as the next date for appearance of the accused and repeated the order already made by him on 30th January 1974. One of the grievances of Sri Shukla is that inasmuch as the Magistrate had taken cognizance of an offence under Section 395, I.P.C., he .should have, instead of issuing summons in the first instance, issued warrants for the arrest of the accused.

When the accused did not appear before the Court even on 30-3-1974, the Judicial Magistrate issued non-bailable warrants and fixed 24th May 1974, as the next date in the case. Again the accused did not appear before the court on 24th May 1974 and the Magistrate repeated his order dated 30-3-1974, At this stage Sri Shukla requested the Magistrate to proceed .against the accused as provided in Section 87/813, Cri. P.C. but the Magistrate did not agree to it. He has since

explained that he did not agree to initiate proceedings under Section 87/88, Cr.P.C. -as no report on the warrants already issued by the court had been received by that time. However, on 30th August 1974, 14, out of 15 accused persons appeared before the Magistrate and moved an application stating that earlier Sri Shukla had filed a report against them under Section 379, I.P.C. and on finding that there was no case against them, the police had submitted a final report.

They claimed that they had been falsely implicated because of .party faction and prayed that the warrants issued against them be cancelled and they be released on executing personal bonds. They moved one more application praying that in future they be permitted to appear before the court through their counsel. 'The same day the Magistrate made an order cancelling the warrants and directing that the 14 accused be released on executing personal bonds of Rs. 1,000 each. He also permitted them to appear in court through a counsel. Fifteenth accused appeared in court on 7th September 1974 and he also moved similar application? and obtained similar orders. Thereafter on 7th October 1974 the Magistrate fixed 25th November 1974 as the date on which the complainant was to produce his evidence.

3. On 25th of November 1974 Sri Harihar Shukla moved an application before the Magistrate alleging that despite the orders made by the court, the accused had been avoiding to appear before it at one and1 the same time. Even after orders for the issue of non-bailable warrants had been made and although all the accused had not appeared their application for permission to appear through counsel had been accepted even without requiring them to furnish bail. The accused1 had started saying that their lawyer and parker were connected with some important minister and that is why these facilities had been extended to them. The accused further gave out that theirs was the only case where, despite the issue of bailable warrants, and even though they had not appeared before the court at one and the same time, they had not been required to furnish hail.

The accused were also saying that despite the police case, they had been permitted to appear through a counsel and the court had. instead of committing

them to Sessions asked the complainant to produce his evidence. The accused were taking improper advantage of the order passed by the court and apart from maligning the Minister they were trying to defame the Court. The accused were also saying that the discretion exercised by the court was arbitrary and were making all sorts of irresponsible statements. They were also trying to intimidate the witnesses. Sri Shukla therefore made the following prayer:-

1. That the case should immediately be committed to the court of Sessions.
2. That all the accused persons be required to furnish bail for larger amounts and
3. That the order permitting them to appear through counsel be revoked.
4. The Magistrate disposed of the aforesaid application on the same day i.e. 25th November 1974 and made an order, which translated into English reads thus-

If all that has been stated in the application is based on what the accused are saying there is no need for the complainant, who is an able lawyer to get perturbed. It is surprising that even though the cognizance of the case was taken under Section 190(1)(c), Cr.P.C. the learned Counsel has described the case as a police case. It is in the discretion of the court to direct release of any accused on executing personal bond. It appears that so far the witnesses were being summoned by following the procedure prescribed for in the old Cr.P.C. Accordingly it is unnecessary to summon them on future dates. Let the case be listed for orders and arguments on 13-1-1975.

It appears that Sri Shukla was not satisfied with the order passed by the Magistrate and he wanted that the case should be immediately committed to the Court of Sessions. Accordingly, on 26-11-1974 he sent the following telegram to the Administrative Judge of the High Court.

Sri Jagdish Singh, Judicial Magistrate Padrauna at Kasia, Deori doing politics, misbehaving, creating groupism, discriminating, inquiry and transfer prayed - Harihar Shukla.

Somehow, the Magistrate came to know that Sri Harihar Shukla had sent some telegram to the Administrative Judge. He asked Sri Shukla to disclose to him the contents of that telegram, but Shri Shukla told the Magistrate that he did not have a copy of the same with him. However, the Magistrate procured a copy of the telegram directly from the telegraph office.

5. According to Sri Shukla, on 25th Nov., 1974 the Magistrate had asked him to withdraw his complaint and when he did not agree to it, he subsequently drew up a notice requiring him to show cause why in view of the facts mentioned in his application 'dated 25-11-1974 he should not be dealt with for committing contempt of his court and ante dated it as 25th November 1974. The learned Magistrate denied these allegations and explained that he had issued the notice dated 25-11-1974 on the same day and did not ante date it. Subsequently when on 28th November 1974 (he came to know, through an application moved by a counsel, that Sri Shukla had sent a telegram to the High Court, he wanted to know what was contained therein so that if it became necessary to do so, correct facts may be reported to the High Court. Accordingly he managed to obtain a copy of the telegram from the telegraph office and to forward the same to this Court.

6. In response to the notice issued by the Magistrate Sri Shukla filed a reply saying that he never intended to commit contempt of court and if the learned Magistrate insisted in initiating contempt proceedings he would place all the material facts before the High Court. Sri Jagdish Singh then reported the matter to this Court saying that the allegations made by Sri Harihar Shukla in his application dated 25th November 1974 as also in the telegram dated 26th November, 1974 addressed to the Administrative Judge, contained unwarranted and unjustified remarks regarding his character and integrity as a [presiding officer of a court. Sri Shukla was therefore guilty of committing grave type of contempt of court and should be dealt with accordingly.

7. It also appears that subsequently the Magistrate took up the case on 13th January 1975 when after hearing the counsel for the parties, he passed a reasoned order mentioning that the allegations made in the first information report lodged by Sri Shukla, at police station Turkpatti, if at all, made out a case under

Section 379, I.P.C. and not under Section 395, I.P.C. In the circumstances, the order summoning the accused under Section 395, I.P.C. did not appear to be justified, instead they should have been summoned only under Section 379, I.P.C. he was not expected to continue the mistake committed by him earlier. As the case before him was not exclusively triable by court of Sessions, the declined to commit the accused to the court of Sessions and directed Sri Shukla to produce his evidence under Section 252, Cr.P.C. on 25th March. 1975. We may add that there is no material before us to show that the view of the learned Judge that the allegation made by Sri Shukla in the first information report lodged by him did not make out a case under Section 395, I. P.C.

8. A perusal of the aforementioned events clearly show that Sri Shukla wanted to take advantage of an inadvertent mistake committed by the Magistrate in initially summoning this accused under Section 395, I.P.C. and he was keen to get them committed to the court of Sessions. In the circumstances the action of. the learned Magistrate in merely summoning the accused in the first instance and in releasing them on executing [personal bond specially when cognizance against them was taken under Section 190(1)(c) of the Code as if at all, they could be indicted only under Section 379 could not be said to be improper. However, the question that still remains to be considered is whether the averments made in the application dated 25-11-1974 filed by Sri Shukla and those made in his telegram dated 26-11-1974 addressed to the Administrative Judge, amount to contempt of court,

9. So far as the application dated 25th of November 1974 is concerned, it can be divided into three parts. In the first part the applicant Sri Harihar Shukla mentioned the fact that the accused persons had, despite the orders made by the court, been avoiding to appear before it at one and the same time, and that even after the issue of bailable warrants the accused persons had been, without furnishing bail, permitted to appear on future dates through a counsel. So far as these factual averments are concerned they, on the face of them, are not directed either towards scandalizing the court or in lowering its dignity or interfering with the administration of justice. It may be that recitals contained in this part indicated that the applicant was not satisfied with the order passed by the court, permitting the accused to be represented through a counsel, and he wanted the same to be

modified, but such mention of the order made by the court with a view to get the same revised cannot be construed as amounting to contempt of court.

10. Second part of the application consists of an allegation that the accused had been making unwarranted allegations against the court and an important Minister, and they were trying not only to malign the Minister but also to defame the court. It was also alleged that the accused had been trying to intimidate the prosecution witnesses. On the face of its these allegations were made for the purpose of obtaining the relief mentioned in the third part of the application, namely set i(sic) the .accused toe required to furnish larger bail and they be committed to the court of Sessions forthwith. If correct, these allegations were appropriately made for obtaining the aforementioned reliefs. Such recital in the .application, could not !be interpreted as meaning that Sri Shukla was trying to scandalize the court. The tenor of the allegations made in this port of the application, on the other hand, is .that Sri Shukla was bringing it to the notice of the court that the accused had been trying to scandalise the court.

Even if there had been something to show that Sri Shukla made those allegations knowing them to be false and as toeing without any basis, it may have been possible to contend that Sri Shukla had made those false allegations with a view to scandalize the court and his action amounted to contempt of court (we do not propose to express any concluded opinion on this point). However, there is absolutely no material before us on the basis of which we can conclude that the averment made by Sri Shukla, regarding the conduct of the accused was false to his knowledge or that the same had been wrongly made with a view to scandalize the court. In substance, the averments made in the application amount to a complaint that it were the accused who were trying to scandalize the court. In our opinion the act of informing a court that some one is trying to scandalize it, and describing the manner in which the court is sought to be so scandalized, by itself will not result in commtting contempt of 'court.

11. So far .as the third part of the application viz, the prayer contained in it is concerned it does not, on the face of it, constitute contempt of court.

12. We are therefore of opinion that there is nothing in the application dated 25th November 1974 which constitutes contempt of Sri Jagdish Singh's court.

13. Coming now to the telegram dated 26th of November 1974 it is clear that it contains imputations that the Judicial Magistrate was misconducting himself and casts a reflection on his integrity. The allegations made in the telegram may render Sri Shukla liable for an action for defamation but the question that still remains to be considered is as to whether such imputations regarding honesty and integrity of a judicial officer, in a telegram, addressed to the Administrative Judge, who is incompetent to take disciplinary proceedings against that officer, amounts to contempt of court.

14. There is a clear distinction between defaming or committing libel of a judicial officer in relation to his judicial work and committing contempt of court. In the case of *Bathina Rama Krishna Reddy v. State of Madras* : 1952 CriLJ832 the Supreme Court observed thus:-

A libellous reflection upon the conduct of a Judge in respect of his judicial duties, may certainly come under Section 499 Penal Code and it may be open to the Judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a Judge; but such libel may or may not amount to contempt of court. As the Privy Council, observed in *Surendra Nath v. Chief Justice and Judges of the High Court* (1884) ILR 10 Cal 109 (PC).

although contempt may include defamation yet an offence of contempt is something more than mere defamation and is of a different character.

When the act of defaming a Judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of the course of law which exist for their good. As was said by Willmott C. J. in *Willmott's opinion*, p. 256 *Rex v. Davies*, 30 at pp. 40-41.

attacks upon the Judges excite in the minds of the people a general dissatisfaction with all judicial determinations... and whenever man's allegiance to the law is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges as private individuals but because they are the channels by which the King's justice is conveyed to the people,

What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of court. If the defamation of a subordinate court amounts to contempt of court proceedings can certainly be taken under Section 2, Contempt of Courts Act, Quite apart from the fact that other remedy may be open to the aggrieved officer under Section 499, Penal Code. But a libel, attacking the integrity of a Judge may not, in the circumstances of a particular case, amount to contempt at all although it may be the subject-matter of a libel proceeding. This is clear from the observations of the Judicial Committee in the case of the matter of Special Reference from Bahama Island, 1893 AC 138....

These observations, in our view, clearly (show that in the opinion of the Supreme Court a libellous allegation made against ;a Judge in connection with his judicial function will not ipso facto and necessarily result in committing contempt of his court. They will so result only if they, in 'the circumstances, have a tendency or are : calculated to interfere with the course of justice, or to scandalize the Magistrate concerned by lowering him generally in the eyes of the public and affecting the dignity of his court. A mere libellous allegation regarding the conduct of a presiding officer of a court, made to a superior authority which does not have the aforementioned tendency, will not amount to contempt of court.

15. Decision of the Supreme Court in the case of Brahma Prakash v. State of U.P. : 1954 CriLJ238 also seems to approve the aforesaid distinction. In Paragraph 8 their Lordships of the Supreme Court observed thus:-

It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law his

has been administered in the courts. It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to 'the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.

There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which amounts to scandalizing the court itself - an expression -which is familiar to English lawyers since the days of Lord Hardwicke vide *In re Read and Huggonson*, 1742-2 ATK 469 at p. 471. This scandalizing might manifest itself in various ways but in substance it is an attack on individual Judges or the Court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the courts which are of prime importance to the litigants in the protection of the right and liberty.

Thus the -basic test to be applied in such cases is to find out whether an unwarranted and defamatory aspersion upon the character or ability of the Judges has been made in such circumstances that it hinders and obstructs the due administration of justice in the courts or it tends to create distrust in the popular mind and thereby impair confidence of people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.

16. In a case where a complaint containing defamatory allegations against a presiding officer, a court, is made to a superior authority, requesting it to take appropriate administrative action in the matter, and a copy of the same is neither communicated to the officer concerned nor is published for general public consumption, it cannot possibly have the effect of hindering or obstructing the due administration of justice or to create distrust in the popular mind and impair

confidence of people in the courts. In similar circumstances a Division Bench of this Court in the case *Rex v. B S. Nayyer* : AIR1950 All549 observed thus:

The words objected to were not used in any newspaper, article or in any other writing meant for the perusal of the public generally, nor were they used to influence the Magistrate said to be concerned in them, but they were used: in representations made to authorities which had power to redress the grievance of which the user of the word complained. If those complaints are genuine and are made in a proper manner with the object of obtaining redress and are not made mala fide with a view to either to exert pressure upon the court in the exercise of its judicial function or to diminish the authority of the court vilifying it, it would not be in furtherance of justice to stifle them by means of summary action for contempt but rather the reverse.

The learned Government Advocate was unable to point to any decision in which action might have been taken for contempt of court in such circumstances. All the cases that were placed before us were cases in which public criticism was made of the conduct of a judicial officer in the newspaper or in speeches. It would indeed be extraordinary if the law should provide a remedy-the conduct of even a member of a highest judicial tribunal in the exercise of his judicial office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office-and yet no one should be able to initiate proceedings for enquiry by a complaint to the appropriate authority by reason of a fear of being punished for contempt, and I can find no justification for this view.

In the instant case we find that Sri Shukla merely made a complaint to the Administrative Judge. He did not take any steps to communicate the contents of the telegram in question to the Magistrate. It was the Magistrate who himself fished out its contents. In the circumstances it cannot be said that the action of Sri Shukla in sending the telegram had the tendency to intimidate the Magistrate into dealing with the case in a particular manner or to interfere with the fair decision of the case. There is nothing on the record to show that Sri Shukla did anything to publish the telegram in a manner that its contents became generally known to the public and the dignity of the Court be lowered in its eyes.

17. In view of the aforesaid discussion we are of opinion that the averments made in neither the application dated 25th November 1974 nor in the telegram dated 26th November 1974 in the circumstances of this case amount to con-tempt of court.

18. The notice issued to Sri Harihar Shukla is accordingly discharged and the present proceedings are dropped.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com