

In Reference Vs. Kailash Nahta

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Court : Madhya Pradesh

Decided On : Jan-09-2009

Reported in : 2009(2)MPHT48

Judge : R.S. Garg and ;U.C. Maheshwari, JJ.

Appellant : In Reference

Respondent : Kailash Nahta

Judgement :

ORDER

R.S. Garg, J.

1. Vide letter dated 21-5-2007 Shri M.P. Tiwari, Judicial Magistrate, First Class, Sagar made a reference to the District and Sessions Judge, Sagar for referring the matter to the High Court so that an appropriate action is taken against the contemner for committing contempt of lawful authority of the Court of Shri MP. Tiwari.

2. The matter was referred by the Additional District and Sessions Judge, Sagar vide his letter dated 6-6-2007 bearing No. 1307/BF/93, to this Court.

3. The matter was received in the Registry of this Court. After receiving the said reference, vide proceeding dated 20-11-2007, Registrar (Judicial) considered the

reference to be under Section 15(3) of Contempt of Court Act, 1971 and requested to Hon'ble the Chief Justice that, if approved, the matter may be registered as a Criminal Contempt and be placed before the appropriate Division Bench. Hon'ble the Chief Justice, vide his order dated 26-11-2007 approved the proposal and, accordingly, the matter was registered as Contempt case.

4. The matter came-up for consideration before the different Division Benches and ultimately on 15-9-2008 a Division Bench presided over by Hon'ble the Chief Justice directed that notice be issued to the respondent/contemner to show cause as to why the contempt proceedings be not initiated against him.

5. On 5-1 -2009, the matter was listed before us and it was heard. At the request of Shri Gupta, it was directed to be taken up on 7-1-2009. The matter was fully heard on 7-1-2009 but to give further opportunity to respondent, we directed that the matter be taken up today. Today, the contemner has tendered his unconditional apology for the action taken by him. The acceptance and rejection of unconditional apology shall be considered at the appropriate stage.

6. Vide reference letter dated 21-5-2007 Shri M.P. Tiwari, learned Judicial Magistrate First Class, Sagar reported to this Court that Criminal Case No. 850/2004 (State of M.P. v. Kamapat Gautam and Ors.) was fixed before the Court on 21-2-2007 for delivery of judgment. The accused persons, namely, Smt. Shanti Gautam, Kamapat Gautam, Ramkankar Gautam, Ramakant and Ram Sunder were present in the Court, were sitting outside the Court room and waiting for delivery of judgment. Before the judgment could be delivered, an application was filed by the accused persons that the complainant Smt. Sanjna Mishra and her associates fought with the accused persons. The application was taken up for consideration at 4.30 p.m. and it was reported to the Court that contemner Kailash Nahta came and dragged away accused Ramsunder, Ramkankar, Ramakant and Kamapat and when he was dragging them the complainant Smt. Sanjana Mishra was also with Mr. Kailash Nahta. Thereafter, the learned Magistrate issued a noticed to the Station House Officer of Police Station, Gopalganj and thereafter Shri Sanjay Agrawal, City Superintendent of Police and non-applicant Kailash Nahta appeared in the Court at 5.15 p.m. Their explanations were sought by the

Court.

7. In Paragraph 3 of reference application, it is observed by the learned Magistrate that in the preliminary enquiry, it had come to the light that it was known to Shri Nahta that Criminal Case No. 850/04 was listed before the Court on 21-2-2007 for delivery of judgment. He also observed that as the complainant Smt. Sanjana Mishra was accompanying Mr. Kailash Nahta, hence the contemner knew about the registration of Crime No. 75/07.

8. The learned Court had observed that while the case was listed for delivery of judgment, the contemner dragged away the accused and this act had created hindrance in judgment delivery system.

9. The Court further observed that the reply filed by Kailash Nahta was neither justifiable nor reasonable. The learned Court, accordingly, observed that the action taken by Kailash Nahta amounted to contempt of Court. The Court, therefore, requested to Registrar to place the matter before this Court. The matter was accordingly registered and notices were issued.

10. Mr. Kailash Nahta has filed his reply, which runs in as many as six pages along with the number of Annexures which run in the 45 pages.

11. The fact that Mr. Nahta had taken away the accused persons from the Court had not been disputed by him. According to him on receiving wireless message that some persons were beating a constable, he came to the Court and when he wanted to make an enquiry from the accused persons the accused persons anticipating that the alleged contemner has come to arrest them in connection with Crime No. 75/07, pounced upon Mr. Nahta, caught hold of his collar and misbehaved with him. It is also submitted that he never intended to cause any hindrance in delivery of judgment and as he was informed that some persons were beating the Constable, it was his duty to stop them and, therefore, he took away those persons and lodged them in motor vehicle and then again came to the Court. Placing strong reliance upon Annexure R-1, an application dated 21-2-2007 filed by Kamalapat and Smt. Shanti Devi and others, it is contended by the contemner that in the said application filed on 21-2-2007 there is no reference of

the fact that the present contemner dragged the accused persons or misbehaved with them. On basis of this application it is submitted that the learned Judge was not justified in recording the proceeding at 4.30 p.m. on 21-2-2007 that the present contemner dragged away Kamlapat, Ramkankar, Ramakant and Ramsunder. The said objection, at this very stage, can be very conveniently rejected. The application dated 21-2-2007 has been filed by Shri R.K. Pandey, Advocate and signed by Kamlapat, Ramkankar and Shanti Devi and others. From this application, it would clearly appear that the said persons informed the Court that when those persons came to the Court to attend the Court proceeding, the original complainant (Smt. Sanjna Mishra) and some others came to them, started beating them, extended threats and, therefore, they were making application to the Court for their protection.

12. Undisputedly, when the application was filed, the said persons Kamlapat, Ramkankar and Ramakant were not in the custody of contemner otherwise they could not have endorsed their signatures on this application. It would also be justified to hold that the said application was filed before 4.30 p.m.

13. It appears that the application came up before the Court at about 4.30 p.m. At about 4.30 p.m., Shri R.K. Pandey, learned Counsel for the accused persons submitted before the Court that when the accused persons were sitting outside the Court Shri Nahta, SHO Police Station, Gopalganj came there and dragged away three persons. The Court recorded the proceeding at 4.30 p.m. and directed that Mr. Kailash Nahta be summoned. The application dated 21-2-2007 (Annexure R-1) does not refer to the name of present contemner, Kailash Nahta, therefore, from the proceedings recorded at 4.30 p.m. it cannot be assumed that in absence of an allegation against the respondent in Annexure R-1 that allegations against Mr. Nahta are concocted the argument is absolutely palpable and misconceived. We have already found that the application filed on 21-2-2007 was signed by the accused Kamlapat, Ramkankar and Ramakant, therefore, it has to be held that at the time of filing the application the accused persons were not in the custody and they were making the complaint that at that time, Smt. Sanjna Mishra came with certain persons and started beating the accused persons. From the proceedings recorded at 4.30 p.m., it would clearly appear that the complaint made by the

learned Counsel for the complainant was that the accused persons were dragged away by Mr. Kailash Nahta and other three persons. We do not find any ambiguity either in the application (Annexure R-I) or the Court proceeding dated 21-2-2007 recorded at about 4.30 p.m.

14. After the notices were issued to Mr. Nahta and C.S.P. Shri Sanjay Agrawal appeared in the Court at 5.15 p.m. The Court issued a notice to Mr. Nahta to show cause that under what circumstance, he dragged away the accused persons from the Court. The Court thereafter recorded that in the given set of the situation, the judgment could not be pronounced. At that point of time the contemner did not inform the Court that he had taken the said persons into custody as they had pounced upon the contemner.

15. It is to be seen from record that Smt. Sanjna Mishra had submitted a written report on 21-2-2007 at the police station at 4.55 p.m. which was registered as First Information Report No. 75/07.

16. We are referring to all these details to show that in what manner accused persons were subjected to police atrocities and how the authority of Court was flouted. The report was received at 4.50 p.m. We would be justified in presuming that after receiving the report, the same has been recorded in the register as First Information Report.

17. According to the contemner, he received a message at 17.05 from the Police Station that certain persons were fighting with a woman and were also beating a Police Officer. After receiving this information, Mr. Nahta proceeded towards the Court. The time of the wireless, i.e., 17.05 is important in view of the Court proceedings recorded at 4.30 p.m. because according to Mr. Nahta after receiving the information at 17.05, he came to the Court, inquired about the persons who earned a fight with a woman and had beaten a constable. We had inquired from Mr. Nahta that where was he when he received the wireless message. Day before yesterday, in the open Court, in presence of Mr. P.D. Gupta, learned Counsel, he informed the Court that he was on patrolling but making an improvement to his statement he informed the Court that he was very close to the Court as he was informed that some theft has been committed.

18. According to Mr. Nahta, the statement which he made in the open Court that he came to the Court Campus, made inquiry from certain persons and then he was told that the persons who are fighting with a woman and beating the police constable were on the first floor of the Court. He also admitted in the open Court that he could not find the constable who was beaten by the accused persons. According to him, he reached to the first floor and when he was making inquiries from the accused persons, the accused persons apprehending that Mr. Nahta had come to arrest them in connection with Crime No. 75/2007, pounced upon him, caught hold of his collar and at that time Constable Abid, Court Mohrir Devendra and other persons intervened. According to him, three persons namely, Kamlapat, Shyam Sunder and Ramakant were taken into custody and thereafter they were lodged in the police vehicle and immediately thereafter he came to the Court and informed the Court about the entire incident. It is to be noted that Mr. Nahta had appeared in the Court at 5.15 p.m. At that time he did not inform the Court (as it appears from the Court proceedings) that the three accused persons were taken into custody either in connection with Crime No. 75/2007 or because they made an assault on Mr. Nahta.

19. It is to be further seen that the arrest of these persons was sought to be justified on the ground that in between 5 and 5.15 p.m. the accused persons had used criminal force against the Police Officer, beat him, caught hold of his collar and, therefore, they had committed an offence punishable under Sections 353, 186, 332 all read with Section 34, IPC. It also cannot be lost sight of that after putting his appearance before the Court at 5.15 p.m. Mr. Nahta went to the police station and registered Crime No. 76/2007 against Kamlapat, Shyam Sunder and Ramakant. It would be necessary to refer to the defence of the alleged contemner that the accused persons made an assault on him apprehending that Mr. Nahta had gone to arrest them in connection with Crime No. 75/2007. We are not able to understand that how could information relating to registration of Crime No. 75/2007 reach to the accused persons who are already in custody before 4.30 p.m. Even otherwise Crime No. 75/2007 was registered at 4.55 p.m. and the present contemner received information at 5.05 p.m. and immediately thereafter he had come to interrogate the accused persons. If everything is within the knowledge of the officer who registered Crime No. 75/2007 and Mr. Kailash Nahta,

then it would be imaginary on the part of Kailash Nahta to allege on oath before this Court that when the contemner reached on spot, the accused persons probably thought that Mr. Nahta had gone to arrest them in connection with Crime No. 75/2007.

20. During course of the arguments, it was submitted that the three accused persons were arrested in connection with Crime No. 75/2007 at 17.35 p.m. which would also appear from Annexure R-7, the arrest memo.

21. If the facts are correctly mentioned in Annexure R-7 then this would again appear that the Panchnama is also false. The arrest memo has been alleged to have been prepared after 5.35 p.m. while the report before the Court was before 4.30 p.m. the three persons were dragged by Mr. Nahta from the Court premises. Even otherwise it would again appear from the First Information Report of Crime No. 76/2007 that the accused persons were taken into custody between 5 and 5.15 p.m. because the FIR clearly shows that on being asked, the accused gave their names as Kamapat, Shyam Sunder and Ramakant and thereafter, the accused persons were taken into custody and were lodged in the police vehicle. If this all was done before 5.15 p.m. then the Panchnama (Annexure R-17), alleged to be prepared by the Investigating Officer of Crime No. 75/2007, would be false and would clearly show that it has been created, concocted and manufactured to cover the misdeeds of Mr. Kailash Nahta.

22. The First Information Report registered in Crime No. 76/2007 shows that he received the information between 5 and 5.15 p.m. while he was patrolling. Before this Court, it is sought to be submitted that the contemner had gone to the Court in relation to some investigation. This submission that he had gone to make investigation into some theft case would again run contrary to the Rojnamcha Sanha No. 1029, dated 21-2-2007 which clearly proves that Town Inspector Kailash Nahta left police station at 3.45 p.m. for patrolling. According to him, rather according to his First Information Report in Crime No. 76/2007, it would clearly appear that he received the information that some persons have beaten some police people. This fact mentioned in the First Information Report is again incorrect because the wireless message No. 1029 clearly shows that the message was that

some people had beaten a woman and have also beaten a police constable.

23. The fact relating to beating of the woman is conspicuously missing in the First Information Report of Crime No. 76/2007. The First Information report says that when he interrogated certain persons, all these persons pounced upon him and created hindrance in discharge of official duties. If that was so, then he was obliged to inform the Court about the incident and arrest of the three persons. On one side, the defence of Mr. Nahta is that Investigating Officer of Crime No. 75/2007 had arrested three accused persons at 5.35 p.m. and, at the same time, in his own First Information Report (Crime No. 76/2007) he mentions that he had taken the persons into custody and thereafter he went back to the Court and gave information to the Court. It is not known to anybody that to which Court he went. If after arresting the accused persons he had gone to some Court to inform the Court about the arrest then the cat would be out of the bag because the statement made in the First Information Report would clearly prove that Mr. Nahta knew that such persons were to attend some Court proceedings and, therefore, Mr. Nahta was required to inform the Court regarding arrest of the accused persons. This was the first version in the First Information Report which was sought to be diluted by other documents and the replies. From the proceedings dated 21-2-2007 recorded at 5.15 p.m. it does not appear that Mr. Nahta, at any point of time, when the Court was recording the proceedings, informed the Court that he bonafidely arrested those persons because accused persons pounced upon him and caused hindrance while the contemner was discharging his official duties. Not only that immediately after 5.15 p.m. even before registering the First Information Report at 17.45 p.m. he did not make any application to the Court that he had taken the accused persons in custody in connection with Crime No. 75/2007 or because the accused persons committed yet another offence by making an assault on the police officer. If up to 5.15 p.m. when contemner Kailash Nahta appeared in the Court with City Superintendent of Police, Shri Sanjay Agrawal, there was nothing like arrest of the accused persons or an attack of those persons upon Mr. Kailash Nahta then we would be justified in observing that to justify his own wrong deeds and cover his misconduct, Shri Kailash Nahta had registered Crime No. 76/2007 against the accused persons.

24. In Paragraph 2 (last line of Paragraph 2) the contemner has said that the bonafides of the contemner would be clear from the fact that after lodging these persons in police vehicle and before actually taking them to police station, he appeared before the Hon'ble Judicial Magistrate, First Class and apprised him of the situation and soon on the next day a remand was granted. We have already found that on 21-2-2007, even upto 5.15 p.m. the contemner did not inform the Court that he had taken the accused persons in custody. If the statement made in the reply is true then same proceedings should have been brought on record to show that before 5.15 p.m. the contemner appeared in the Court and apprised the learned Judicial Magistrate of the situation or of the fact of the arrest.

25. The reply filed by the contemner is an eye-wash. It appears that the contemner has tried to take out the benefit of certain corrections made in the application dated 21-2-2007. Shri Gupta, after taking us through the application, submitted that originally the application mentioned that the accused persons after attending the proceedings when came out of the Court campus they were beaten by the complainant (Smt. Sanjna Mishra) and some other persons. While after making corrections, the application was made to read that while the accused persons were present in the Court for attending the proceedings, they were beaten by Smt. Sanjna Mishra and her associates. This fact or this defence, in our opinion, cannot provide any reasonable defence to Mr. Kailash Nahta because undisputedly up to 5.15 p.m. the Court's proceedings were not over and the judgment could not be delivered in the matter.

26. It would again be necessary to note that on 21-2-2007, it was informed to the Court and the Court recorded the proceedings at 4.30 p.m. that when the accused persons were awaiting their call for delivery of judgment, Mr. Nahta and some others came to the Court and dragged away Kamlapat, Ramkankar and Ramakant. If at 4.30 p.m. the Court had recorded the proceedings on the say of the Counsel for the accused persons then we have no reason to hold that the proceedings recorded by the Court at 4.30 p.m. are wrong. If before 4.30 p.m. the accused persons were taken in custody and the fact was reported by the Counsel for the accused to the Court then it would be height to say that the contemner after receiving the message at 5.05 p.m., came to the Court and took away the accused

persons in custody, lodged them in his vehicle, thereafter came to the Court and apprised the Court of the situation.

27. In our considered opinion, the contemner knowing well that the accused persons were awaiting the delivery of judgment in the matter either on persuasion by Smt. Sanjna Mishra or for the one reason or the other, came to the Court, dragged away some of the accused persons, took them in custody and thereafter prepared a false arrest memo at 5.35 p.m. It also appears that after committing such illegalities to save his skin and cover his misdeeds, he has registered a false case against the accused persons as Crime No. 76/2007.

28. The conduct of Mr. Nahta is reprehensible. On one side, he did not show any reason to the Court which was ready and willing to deliver the judgment, did not care for the personal liberty of the accused persons, violated their human rights and thereafter registered a false case against the accused persons, got them arrested and on the false charge again took remand for their lodgment in the jail.

29. Taking into consideration the totality of the circumstances and for the reasons aforesaid, we hold that Mr. Kailash Nahta, the then Station House Officer, Police Station, Gopalganj, Sagar at present Inspector Human Rights Commission, Bhopal had committed contempt of the lawful authority of the Court and had also created false reports and false documents to cover up his illegalities. We accordingly hold him guilty.

30. After this part of the judgment was recorded, Mr. Nahta submitted before the Court that from Annexure R-14, it would appear that the proceedings were recorded on 6-5-2007 and presence of A.D.O. (P), Mr. Rajpoot is shown. According to him, the proceedings dated 6-5-2007 is wrong because 6-5-2007 was Sunday. We do not know that whether the proceedings were recorded on 6-5-2007 or any date before or after the date but that question was never raised by the contemner before the Lower Court nor at any point of time, it was submitted to the Lower Court that the proceedings could not be recorded on 6-5-2007.

31. Assuming the proceedings dated 6-5-2007 were recorded in absence of the contemner, the same is not going to make any difference because in proceedings

dated 6-5-2007, the Court has simply observed that the matter be referred to the High Court for taking appropriate action under Section 15(3) of the Contempt of Courts Act. Such an action could be taken by the Court even on a holiday. Present is not a matter where the Court was required to deliver an order or judgment on a working day. These are the administrative matters and if on 6-5-2007 such proceedings were recorded, the same could not help to the contemner.

32. At this stage, we have asked Mr. Gupta and the contemner to make submission on question of quantum of sentence.

33. We had asked Mr. V.K. Shukla, learned Deputy Advocate General that in the set of the circumstances what sentence should be awarded, Shri Shukla except saying that the question of sentence is between the contemner and the Court, did not say anything though he clearly admitted that present is a serious matter.

34. Shri P.D. Gupta, learned Counsel for the contemner submitted that present is a case where the contemner had committed a mistake and the act was foolish but, in any case, he deserves an opportunity to improve. It is submitted that any punishment awarded to the contemner would not only ruin him but ruin his family also. Mr. Nahta has stated before the Court that for all his acts and his deeds he had tendered his unconditional apology before the Lower Court and he also tenders unconditional apology before this Court.

35. We have considered the submissions made by Shri P.D. Gupta and Shri Nahta. On one side, Mr. Gupta and Mr. Nahta say that they are sorry for the act done by the contemner but from the records it would clearly appear that after dragging away the accused persons from outside the Court room not only he committed contempt of the Court but to cover the misconduct and misdeeds not only three innocent persons were taken in custody on a false charge but they were kept in police custody and even on a false report lodged by Mr. Nahta, they were kept in custody. Present is not a case where after committing the wrong, the wrong doer had come to the Court seeking mercy of the Court but present is a case where after committing misconduct and misdeed, the contemner to cover his misconduct, has created false documents, registered a false case and took the innocent persons in the custody. The act is not pardonable. We award three

months' sentence to the contemner. He be taken in custody and be sent to jail for undergoing the sentence.

36. A copy of this order be sent to the Chairman, Human Rights Commission to inform the Hon'ble Chairman that one of their Inspector has been found guilty for committing contempt of the Court and violating the human rights of certain persons.

Copy of this order be also sent to the Director General of Police and the Principal Secretary (Home) for taking appropriate action against the convicted contemner.

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