

State Vs. R.N. Patra

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Court : Orissa

Decided On : Jul-25-1975

Reported in : 1976CriLJ440

Judge : R.N. Misra and; B.K. Ray, JJ.

Appellant : State

Respondent : R.N. Patra

Judgement :

R.N. Misra, J.

1. On 16th of October, 1974, contemner was called upon to show cause as to why a proceeding under the Contempt of Courts Act, 1971, shall not be initiated against him for contempt of this Court. On 26-11-1974, contemner appeared through counsel and asked for time to show cause. In due course he entered personal appearance and showed cause. The matter was heard on 12-2-1975 and a Bench of this Court decided that notice should issue to contemner to show cause as to why he shall not be punished for contempt. By then on the materials available, the Court also decided that contemner should be called upon to show cause as to why he may not be punished for the contempt of the Court of the Sessions Judge, Ganjam-Boudh at Berham-pur. Accordingly a combined notice was issued to contemner on 18th of February, 1975, to show cause as to why he would not be punished under the Contempt of Courts Act for having committed

contempt of this Court as also of the Court of the District and Sessions Judge of Ganjam.

2. The allegations in the notice which prima facie constitute contempt are as follows: The contemner addressed a petition dated 27-8-1974 to the Honourable the Chief Justice of the Supreme Court of India making allegations against the District and Sessions Judge of Ganjam-Boudh at Berhampur and forwarded a copy thereof addressed to the Honourable the Chief Justice of this Court. Therein, he made allegations that Shri K. P. Acharya, District and Sessions Judge of Ganjam, Berhampur, was giving all to understand that he had the protection so long as the Chief Justice continued in office. He also alleged that the District and Sessions Judge was visiting freely the residences of counsel for parties whose cases he was hearing while in circuit and was obliging a group of lawyers.

After the letter was received in this Court, a query was made by the Registrar of this Court to ascertain whether contemner had really made the allegations in the aforesaid manner and also as to whether he would be in a position to substantiate the same. On 16-9-1974, contemner replied to the effect that the allegations made in the letter to the Honourable the Chief Justice of India stood substantiated by the records of the cases and it was up to the Supreme Court to investigate into the correctness of the allegations by itself or through an independent machinery like the C. B. I.

An independent application dated 2-9-1974 was forwarded by contemner to the Honourable the Chief Justice of the Supreme Court of India making further allegations against the District and Sessions Judge of Ganjam endorsing a copy thereof to the S. P., C. B. I, Orissa, Bhubaneswar, with an endorsement for early action. A separate application was also addressed to the Deputy Inspector General of Police, Orissa, Cuttack, making allegations against the said District and Sessions Judge and these documents were forwarded in due course by the addressees to the Court for appropriate action.

3. On 31st of March, 1975, contemner showed cause. In paragraph 3 of the show cause, he stated that on 12-12-1974 and 12-2-1975, contemner had tendered unqualified apology, but since the same was not accepted and notice to show

cause against punishment was issued, be denied to have committed any contempt either of this Court or of the court of the District and Sessions Judge of Ganjam. He pleaded that the allegations made by him and four others of Parlakhe-mundi against the District and Sessions Judge were true. Though contemner was not aware whether there was truth in the statement that 'Shri G. K. Misra, Chief Justice, Orissa, is there to protect 'Shri Acharya', the District and Sessions Judge of Ganjam', the latter had been giving out the same and as such statement created an impression in the contemner that there may not be a fair enquiry against the District and Sessions Judge if the complaint was made to this Court, the letters had been sent to the Supreme Court and enquiry by an authority other than the High Court was suggested. The communications are claimed to be confidential and made in good faith for the purpose of keeping the stream of justice unpolluted.

4. On 17-6-1975, counsel for contemner wanted summons to issue to certain witnesses whom he intended to examine in support of his stand in the proceeding and witnesses were duly summoned. On 26-6-1975, from the service reports it transpired that all the witnesses summoned through Court had been duly served with the notices. Two of these witnesses had sent letters of request to adjourn the hearing pleading personal difficulties. When at the hearing it was suggested that non-bailable warrants may issue to the witnesses, Mr. Rao for contemner stated that he would give up examination of these witnesses. Accordingly no further steps were taken. Mr. Rao examined two witnesses, one being the witness summoned through Court and another who had volunteered to appear at the request of contemner. One more witness whose hazira was filed was declined. Thus in support of con-temner's stand, two witnesses in all have been examined.

5. The charges of contempt are of two parts-one of this Court and the other of the court of the District and Sessions Judge of Ganjam. So far as this Court is concerned, the pertinent writings are as follows:-

This Judge gives all to understand that none can stop his present activities so long as Shri G. K. Mishra, Chief Justice, Orissa is there to protect him.

In this connection the case of Sri Baradakanta Misra, an Ex-District Judge, who was dismissed for representing his grievances to Government against the injustice

done to him gives a good indication, how Judges of definite choice are being encouraged denying justice to people.

(Extracted from the petition dated 27-8-1974).

The allegations made to the Chief Justice, Supreme Court of India by the people of Parlakhemundi stand substantiated by the records themselves, and it is up to the Supreme Court of India to make necessary probe into the allegations either by itself or (through the Agency of the C. B. I.

* * *Any independent agency like the C. B. I. can give a proper finding as to the substance and validity of the allegations. Since there is apprehension of proper enquiry and action in view of the interested contacts of the District Judge concerned with the High Court the matters have been addressed to the Supreme Court of India and it would not be proper to do anything before the matter is enquired into by the C. B. I. for which separate action is being taken by the people, who have jointly referred the matter to the Supreme Court of India endorsing only a copy for your information.

(Extracted from contemner's reply to the Registrar of this Court dated 16-9-1974).

So far as contempt against the District and Sessions Judge of Ganjam is concerned, the material writing is as follows:-

The District Judge, Ganjam, Shri K. P. Acharya came here recently and tried sessions cases and acquitted the accused in two murder cases. The cases are numbered G. R. 260/73 and G. R. 265/73. Before passing judgments he was found in the company of the defending lawyers at the residence of Shri P. V. Ramasastry on the evening on 20-8-1974 and at the residence of Shri K. R. Gorthi on the evening of 23-8-1974. This Judge is always eager to accept the dinner parties from the lawyers, K. R. Gorthi, P. V. Ramasastry, K. K. Murty and K. C. Pani-grahi, who only watch to find out a suitable opportunity to entertain him for their selfish ends. On 20-8-1974 the occasion was farewell accorded to the S. D. O., Parlakhemundii. Usually a tea party was to be arranged but to exploit the presence of District Judge a dinner party was instantaneously arranged wherein

some of the organisers were found to be not in proper sense and frame of mind.

This Judge in order to please the above group of lawyers appointed Shri K. R. Gorthi as defence lawyer in S. C. 26/74 and G. R. 179/71, G. R. 180/71 and other related cases where the accused, who are under-trial prisoners had appointed L. Ramgopalrao as their advocate. This Judge had to cancel the appointment of the said Gorthi as the accused being under-trial prisoner sent a protest petition through the jail authorities.

6. Before proceeding to adjudicate whether contempt has at all been committed, it is appropriate to refer to the provisions of the Contempt of Courts Act (hereinafter referred as the 'Act') :-

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 representations, 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

* * * 6. Complaint against presiding officer of subordinate Courts when not contempt.

A person shall not be guilty of contempt of Court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to-

(a) any other subordinate court, or

(b) the High Court,

to which it is subordinate.

Explanation- In this section, 'subordinate court' means any court subordinate to a High Court.

10. Power of High Court to punish contempts of subordinate courts.-

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself;

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence under the Indian Penal Code.

12. Punishment for contempt.

(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 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.

* * * 13. Contempts not punishable in certain cases:-

Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.'

15. Cognizance of Criminal Contempt in other cases.

(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General.

(2) In the case of criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a Union territory, by such law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation ...

The contemner has owned all the letters referred to in the notice issued to him from this Court. The two witnesses examined by him in this proceeding have clearly indicated that it is contemner who suggested the writing of the first letter and in fact he typed out the same and collected a few signatures apart from appending his own. Thus, it would be quite appropriate to hold that it is contemner who is responsible for the petition dated 27-8-1974 addressed to the Honourable the Chief Justice of the Supreme Court with a copy thereof endorsed to the Honourable the Chief Justice of this Court. It is also pertinent to note that the petition to the Honourable the Chief Justice of India is signed by the contemner alone while the endorsement made for the Honourable the Chief Justice of this Court has been signed by contemner and a few others. The subsequent correspondence is by contemner alone.

With a view to establishing the allegations made in his writings, he has examined two witnesses. O. P.W. 1 is one Sauru Naik, who happens to be an ex-Sarpanch of his area. He has stated that he is the signatory of a letter addressed to the Honourable the Chief Justice of this Court (Ext. A) wherein grievance was made

against an improper acquittal by the said Sessions Judge. The charge against contemner does not refer to this letter. Therefore, this letter is irrelevant except to the extent that there is an endorsement in it that a copy of this letter was nrde over to contemner. O. P.W. 1 has categorically stated that contemner drafted Ext. A and got it typed and without knowing the contents of the letter, at the request of contemner, O. P.W. 1 had signed it. It is contemner who had forwarded the letter to this Court. O. P.W. 1 claims to have met the Sessions Judge in the company of contemner and some others soon after the judgment of acquittal was passed by the Sessions Judge in his Parlakhemundi camp on 16-4-1974.

O. P.W. 2 is a vegetable grower and claims to have accompanied contemner. O. P.W. 1 and some others when they in a body went and met the Sessions Judge after the judgment of acquittal was delivered on 16-4-1974. In his own words he has stated:. Seven or eight persons including O. P.W. 1, contemner, relations of the deceased and myself decided to approach the Sessions Judge complaining about the injustice done. We met the Sessions Judge in the upstairs-residential portion of the guest house and complained about the acquittal. We were told by him that judgment had been delivered and nothing more could be done. Then we informed him that we would intimate the High Court in the matter. The Sessions Judge told us that nothing would happen in the High Court on merit. Even otherwise, nothing would happen because his relative Shri Gatikrushna Misra, the Chief Justice is there ...In cross-examination, a question was put in the narrative form to the witness to the following effect:-

Q. The group discussed with the Ses-siona Judge about the impropriety of the judgment. The Sessions Judge thereafter told you that he had done whatever he could and he had no further powers to look into the case. It was opeii to us to approach the High Court if we felt aggrieved. What happened thereafter?The answer runs thus :-

We told the Sessions Judge that we would approach the High Court. Thereafter, we came out.In cross-examination, the witness does not stick to the statement made by him in his examination-in-chief that the Sessions Judge had indicated to the group that nothing would happen in this Court because his relative Shri

Gatikrushna Misra the Chief Justice was there. O. P.W. 1 who had gone in the company of O. P.W. 2 did not make such statement. In fact, as we recollect. Mr. Rao, counsel for the contemner, suggested to the witness a number of times if the Sessions Judge had made any further statement after having stated that nothing would happen in this Court against the judgment of acquittal. But O. P.W. 1 made no statement. O. P.W. 2 appears to be a person interested in contemner. Otherwise, there would be no justification as to why he would come all the way from Parlakhemundi to Cuttack at his own cost to be a witness in the proceeding.

Contemner took out summons to some witnesses and he could have got summons issued to O. P.W. 2. But he chose not to do so and requested O. P.W. 2 to come to Cuttack and he readily obliged. According to O. P.W. 2, he was requested to come to Cuttack at the instance of O. P.W. 1. These two witnesses have appeared to us to be henchmen of contemner. The contemner has not examined himself nor has he produced any other evidence to support the allegation that the Sessions Judge made a statement that the Honourable the Chief Justice of this Court was a relation of his and nothing would happen on that account if an application for bail is filed in this Court. The contemner has taken the stand that the District Judge was in the habit of saying so and, therefore, he had a feeling that he would not get an even deal in this Court. The contemner has miserably failed to establish the truth of the allegation and we have, therefore, to find that an intentionally false and mischievous statement had been made by contemner in the impugned writing.

Similarly, reference to the case of Shri Baradakanta Misra, an ex-District Judge, wa3 a reckless allegation against the Honourable Chief Justice. It bears an imputation against the impartiality of the Honourable the Chief Justice and clearly suggests that the injustice was done to Shri Baradakanta Misra because he made representations of his grievances to Government. There is a further imputation that Judges of definite choice are being encouraged and justice is. being denied to the people, Counsel for contemner does not dispute that these are allegations which certainly are contemptuous and squarely come within the definition of criminal contempt under Section 2(c) of the Act.

6-A. Under Article 235 of the Constitution, control over the subordinate courts vests in the High Court and not in the Chief Justice alone. Under the Rules of Business of the Courts, one of the Honourable Judges of the Court is in charge of administration. Certain matters are dealt with by a Committee consisting of three Honourable Judges, namely, the Chief Justice, the Hon'ble Judge in charge of administration and another Honourable Judge. Most of the important matters are disposed of by the Full Court. There-fore, even if the Honourable the Chief Justice happens to be a relation of the District and Sessions Judge and contemner could have been misled by the statement of the said District Judge, to suggest that there was the apprehension of proper enquiry and action in view of the interested contacts of the District Judge concerned with the High Court, is a mala fide statement. The contemner has failed to establish any relationship between Shri Acharya and the honourable the Chief Justice. We have already held that he has failed to establish that Shri Acharya made any statement to that effect. Therefore, it follows that there was absolutely no indication for any apprehension in the minds of the contemner while he sent his petition dated 27-8-1974 to the Honourable the Chief Justice of India. To suggest that the High Court would not be in a position to make a proper enquiry in regard to a matter within its control, is highly motivated, mala fide and contemptuous. Such a statement tends to scandalise and lower the authority of the Court and interferes with the administration of justice within the meaning of Section 2(c) (i) and (iii) of the Act. Therefore, contemner is clearly guilty of contempt of this Court.

7. We shall now deal with the question of contempt of the court of the District and Sessions Judge of Ganjam. Mr. Rao for contemner relying upon Section 15(2) of the Act contends that as there has been no reference made by the District and Sessions Judge of Ganjam and admittedly this is not a proceeding initiated on a motion made by the Advocate General, cognisance of criminal contempt of that court cannot be taken by this Court. Learned Additional Government Advocate, who appeared, in support of th⁹ charge of contempt, accepted the submissions of Mr. Rao during hearing of the matter. We are, however, not satisfied that the contention raised by Mr. Rao has any substance. Sub-section (1) of Section 15 of the Act in clear terms states that the High Court may take action on its own motion or on a motion made by the Advocate General or any other person with the

consent in writing of the Advocate General. There is nothing in sub-section (2) of Section 15 which would prevent the High Court to take cognisance suo motu in respect of contempt of a subordinate court. In the notice issued from this Court, no reference to Sub-section (2) of Section 15 has been made so far as it relates to the contempt of the court of the District and Sessions Judge. We are supported in our view by a recent Full Bench decision of the Delhi High Court in the matter of D. B. Vohra, 1974 Cri LJ 899 (Delhi). Apart from the reasonings advanced by the Delhi High Court with which we are in agreement, we are of the view that Sub-section (1) is comprehensive in its terms and Sub-section (2) makes provision for a reference by the subordinate court in respect of cases which do not otherwise come to the notice of the High Court. In the instant case, the contemner's petition brought the allegations to the notice of the Court and the Court decided to take suo motu action. We are, therefore, of the opinion that there is no merit in the objection raised on behalf of contemner so far as the charge of contempt against the subordinate court is concerned.

8. As already stated, the stand of contemner is one of justification. Mr. Rao concedes that the sole evidence in support of the truth of the allegation comes from O. P.W. 2. This witness in his examination-in-chief has stated that on the 20th of August, 1974 and on the 23rd of August, 1974, he had seen the Sessions Judge visiting the houses of two lawyers of Parlakhemundi. As we have already stated, this witness appears to be a henchman of contemner and is prepared to oblige him as and when necessary. It is surprising that he remembers the dates with exactitude though more than ten months are over. Contemner has failed to probabalise the existence of any unholy relationship between the Advocates and the Sessions Judge. The contemner in his petition dated 27th of August, 1974, made allegations regarding dinner parties and referred to the farewell dinner on 20th of August, 1974. There is absolutely no evidence in regard to those allegations.

9. In the case of C. K. Daphtary v. O. P. Gupta : 1971 CriLJ844 it has been stated:-.We are unable to agree with him (counsel for the contemner) that a scurrilous attack on a Judge in respect of a judgment or past conduct has no adverse effect on the due administration of justice. This sort of attack in a country

like ours has the inevitable effect of undermining the confidence of the public in the Judiciary. If confidence in the Judiciary goes, the due administration of justice definitely suffers.

In view of these weighty observations, Mr. Rao for contemner does not dispute that the allegations are such that they would squarely come within the definition of criminal contempt. Our conclusion, therefore, is that contemner is also guilty of criminal contempt of the court of the District and Sessions Judge 'of Ganjam at Berhampur.

10. It has been contended by Mr. Rao that contemner had tendered unqualified apology which should be accepted. As we have already noticed, at one stage, contemner had tendered such apology, but later took the stand of justification in the final show cause. Unqualified apology and plea of justification do not go together. As has been pointed out in the case of *Mulkh Raj v. State of Punjab* : 1972 CriLJ754 'apology' is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, apology is shorn of penitence. We do not think, the facts of the case justify acceptance of apology. Tendering of apology cannot be a panacea in every case of contempt. If that were so, cases of gross contempt would go unpunished and serious mischief to meet which provision has been made under the Act would go unpunished and the purpose of the statute would be frustrated.

The conduct of contemner in this case must now be briefly taken note of. Contemner had no personal stake in the matter. He styles himself as a journalist and claims to be a Homoeopath. Since he did not examine himself as a witness in the proceeding, we had to collect the information from his counsel as to what type of doctor he was. We are told that he does not have any authorised Degree and claims to be a private practitioner. To our query as to what type of journalist he was, we were told that he is a news reporter. As would appear from the evidence of the two witnesses examined on his behalf, contemner takes interest in the litigations of others and though O. P.W. 1 feigns knowledge as to whether contemner makes money by looking after other people's litigation, one can reasonably infer that he does. From the evidence it is clear that it is contemner

who took initiative to set the matter in motion. He persuaded O. P.W. 1 to make a complaint as per Ext. A. It is he who took the initiative of addressing the petition to the Honourable the Chief Justice of India and it is also contemner himself who took the initiative in replying to the Registrar of this Court wherein further contemptuous remarks were made.

Mr. Rao relying on Section 6 of the Act contended that complaints in this case having been made to a superior authority would not constitute contempt. In this case, the impugned petition had been addressed to the honourable the Chief Justice of India. Section 6 makes no reference to the Supreme Court. Contemner has made it clear in his subsequent communication to the Registrar of this Court that the complaint against the Sessions Judge was not meant for this Court and was made to the Supreme Court and a copy only had been endorsed to this Court. A complaint against the Sessions Judge when made to the Supreme Court does not come within the purview of Section 6 of the Act and Mr. Rao is, therefore, not entitled to invoke the assistance of Section 6 in favour of contemner.

The petition made to the Honourable the Chief Justice of India was certainly not an act of good faith in view of what we have found above. We have already come to hold that the allegations were reckless and contemner has miserably failed to satisfy us that those made in the petition were believed by him to be true. There is no material before the Court that he took due care and paid good attention to find out the truth of what he alleged in the petition and the subsequent letter. It was always open to a person to bring to the notice of the superior authority legitimate grievances, but it is not open to a person espousing the cause of a defeated litigant to make reckless allegations without any foundation to vindicate the defeat in the litigation. It is out of an attitude to avenge defeat that contemner came with the false and reckless allegations against the Sessions Judge. Keeping these aspects in view, we are satisfied that it is not a fit case where the apology tendered by him should be accepted. In fact, his conduct shows beyond doubt that apology has not been tendered in good grace and is not the outcome of any penitence. If that were so, contemner would not have changed his stand from apology to justification.

11. In the case of C. K. Daphtary v. O. P. Gupta : 1971 CriLJ844 the learned Chief Justice pointed out:-.We have already referred to cases which show that he cannot justify contempt. If a judgment is criticised as containing errors, and coupled with such criticism, dishonesty is alleged, the Court hearing the contempt petition would first have to act as an appellate Court and decide whether there are errors or not. This is not and cannot be the function of a Court trying a petition for contempt. If evidence was to be allowed to justify allegations amounting to contempt of Court, it would tend to encourage disappointed litigants - and one party or the other to a case is always disappointed - to avenge their defeat by abusing the Judge.

We had pointed out to Mr. Rao for contemner the law on the point when contemner took the stand of justification. Mr. Rao was allowed to lead evidence on behalf of contemner not for the purpose of justifying the allegations constituting contempt, but to indicate the circumstances and the background of the matter in which contemner had made the scurrilous allegations in order to appreciate the conduct of contemner. It is unnecessary to deal with this aspect of the matter any further.

12. Now we have to consider as to what would be the adequate punishment which contemner must suffer. That gross criminal contempt has been committed by contemner is beyond dispute. Contemner claims to be a responsible citizen and a journalist and doctor by profession. Yet he has behaved in a most irresponsible manner and has acted mala fide with view to avenging the defeat of persons in whom he has interest. Keeping in view the mischief done, the conduct exhibited, the unsustainable stand taken in defence and the like, we are satisfied that the case calls for a sentence of imprisonment. In the case of State v. Rama Chandra Mohapatra, 1975 Cut LR (Cri) 125, the learned Chief Justice has observed :- . Times have changed. Indiscipline and moral degradation are gradually developing in society. Unless substantial punishment is imposed the growing tendency to scandalise the judiciary from the lowest status right up to the Supreme Court cannot be arrested ...

In the very judgment, the weighty words of Kent, C. J. in Yates v. Lansingb, (1809) 5 Johnson's Reports, 282, were quoted which run thus:-

We subdue their importance and destroy their authority. Instead of being vulnerable before the public, they become contemptible, and we thereby embolden the licentious to trample upon everything sacred in society and overthrow those institutions which have hitherto been deemed the best guardians of civil liberty.

Taking the age of contemner into consideration and the fact that contemner has been charged for contempt for the first occasion, we are satisfied that one month's simple imprisonment would meet the ends of justice.

13. We accordingly hold contemner guilty of contempt under Section 2(c) (i) and (iii) of the Act both of this Court as also the court of the District and Sessions Judge, Ganjam-Boudh. Contemner is sentenced to imprisonment for one month. We direct the Registrar to take steps to issue the necessary warrants for apprehension of contemner in order that he may suffer the sentence.

B.K. Ray, J.

14. I agree.