

In Re: Tapan Roy and ors.

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Court : Kolkata

Decided On : Jan-31-1997

Reported in : 1997CriLJ2166

Judge : Gitesh Ranjan Bhattacharjee and ;Debi Prasad Sircar, JJ.

Acts : [Contempt of Courts Act, 1971](#); ;[Constitution of India](#) - Articles 129 and 215

Appeal No. : Contempt Matter Nil

Appellant : In Re: Tapan Roy and ors.

Judgement :

ORDER

1. In this case we are required to deal with a flagrant type of aggressive criminal contempt amounting to a worst form of savagery. The Sub-Divisional Judicial Magistrate, Ghatal on 17-12-96 rejected the prayer for confirmation of interim-bail of certain accused persons in G.R. case No. 153/93 and the took the accused persons in custody. This enraged their lawyer Shri Tapan Roy, the contemner No. 1 and other including his law clerks Shri Swapan Adhikary and Shri Somnath Chatterjee, the contemnors Nos. 2 and 3 respectively so much so that they became furious, challenged the order, abused the learned SDJM in filthy languages in open Court which are unquotable, and created chaos and terror in the Court room. The contemner Tapan Roy even attempted to assault the learned SDJM by throwing articles as wooden ruler, ink pot towards him thereby causing

injury on the person of GRO, and the learned SDJM for protecting himself in the circumstances, stepped down from the Ejlash and took shelter in his chamber but Tapan Roy and the said two clerks Swapan Adhikary and Somnath Chatterjee. chased him to his chamber uttering filthy languages against the learned SDJM who was however saved from further enslavement of the raiders by the intervention of GRO, CSI, Court Staff and the SDJM's security guard who closed the doors of the chamber although Shri Tapan Roy and his two clerks even tried to break open one of the doors by kicks. Court's properties were also damaged. On the basis of the report of the above noted incident from the SDJM, Ghatal through the District Judge, Midnapur showing horrendous and scandalous perpetration of outrageous contempt of Court by the said contemnors, this Court took cognizance of the matter and directed the contemnors to personally appear before this Court and show cause as to why they should not be appropriately dealt with for contempt. Pursuant to that order all the contemnors appeared before this Court on 14-1-97 and also filed affidavits. In the affidavits the contemnors tendered unconditional apology for the incident and prayed that this Court might be pleased to take liberal and lenient view of the matter and accept the unconditional apology and drop the contempt proceeding. However the affidavits also contained certain exculpatory statements as a result of which this Court thought it fit that the question of facts should be decided first before taking up the question of considering the unconditional apology tendered by the contemnors. This Court had also received in the meantime an administrative report of enquiry held by the Chief Judicial Magistrate regarding the incident and statements recorded by the Chief Judicial Magistrate in course of his administrative enquiry which was undertaken under the direction of the District Judge before this Court took cognizance of the matter. A copy of the said report of the Chief Judicial Magistrate, Midnapur along with the copies of statements recorded by him was made over by this Court on 14-1-97 to Sri Milan Mukherjee. The learned Advocate appearing on that day for the contemnors and the contemnors were given liberty to affirm and file further affidavits in the matter on 21-1-97. In view of the circumstances, the contemnors however, through their learned Advocate, withdrew the affidavits affirmed and filed in Court on 14-1-97. On 21-1-97 the contemnors however affirmed and filed new affidavits wherein no controversy about the factual aspect of the matter was

raised. On the other hand they tendered unqualified apology for whatever had happened in the Court on 17-12-96. It was also stated in these affidavits that unqualified apology was tendered in sincere and true repentance and not as a matter of defence. Mercy was also prayed for in the affidavits. It was also submitted by Mr. Balai Ch. Roy, the learned senior counsel on behalf of the contemnors appearing on that day that the contemnors were sincerely repentant and they had no defence to offer and were completely at the mercy of the Court and it was further proposed that they would tender unqualified apology to the learned Sub-Divisional Judicial Magistrate, Ghatal in open Court. In view of such submission this Court allowed the contemnors opportunity as prayed for, to tender unqualified apology to the learned SDJM, Ghatal in open Court during Court hours on 27th January, 1997 and the learned SDJM, Ghatal was also directed to send a report in the matter on the next day to the Registrar, Appellate Side of this Court. The matter was also directed to be listed on 31-1 -97 for consideration as to whether the apology as tendered was to be accepted and as to what final order was to be passed in the matter. Accordingly the matter has come up before us today again and the three contemnors are also personally present and represented by their learned Advocate. The report of the SDJM, Ghatal also has been placed before us showing inter alia that the contemnors tendered unqualified apology before the SDJM, Ghatal and prayed for mercy. In this background we are now required to settle as to what final order is required to be passed by us in this matter.

2. The incident recorded above constitutes criminal contempt of extreme notoriety. It is indeed a nauseating spectacle that an Advocate, failing to obtain a favourable order of the Court is hurling unquotable abuses and missiles at the Magistrate in open Court and is chasing him to his chamber where the Magistrate has taken shelter in closed doors after fleeing from the Court room to protect himself from the onslaught of the raiders who are an enraged Advocate and his clerks. There is no doubt that in spite of the growing sense of indiscipline and disrespect for everything everywhere, incident of such enormity and notoriety as happened here are not yet many in civilised circles. But it required not much research to appreciate what a tremendous subversive impact of such an incident, - infrequent though - is bound to reflect on the entire system of judicial administration as well as in the public

mind. The Court, the rule of law, the administration of justice and the cherished nobleness of the profession associated therewith are all but to reduce themselves to ridiculously farcical entity if a Court's judicial order lands a Judge or Magistrate to a humiliating, degrading and dangerous consequence of such appalling magnitude. This Court as the custodian of the rule of law and of the judicial administration in the State, and being entrusted with the inalienable task of exercising Control and supervision over the administration or justice cannot afford to abdicate its responsibility by taking a light view of an incident of this nature. The impact of such an incident cannot also remain confined only to one Court where it happened. It is bound to have a widespread repercussion making all Courts throughout the territory extremely shaky. If the Judges and the Magistrates in discharge of their judicial function have to labour under an apprehension that they may be exposed to such physical and verbal onslaught by reason of any judicial order passed in any matter, it will be well-nigh impossible for them to properly discharge their judicial responsibility without fear which will amount to a virtual liquidation of the judicial independence at the cost of the rule of law. As we have already pointed out the Chief Judicial Magistrate, Midnapur also made an administrative enquiry under the administrative direction of the District Judge before this Court took cognizance of the matter and the report of the CJM is on record to confirm the incident reported by the S DJM. A copy of the said report of the CJM along with the statements recorded by the CJM was also supplied to the learned Advocate for the contemnors.

3. The horrifying effect of the incident will be also evident from the statement made by Shri Mir Hasmat Ali, Munsif, Ghatal to the Chief Judicial Magistrate, Midnapore, According to his statement while he was holding Court on the concerned date at about 4 p.m. he heard a strong hue and cry from outside and he was compelled to adjourn the hearing of the suit and came down from the Court room to his chamber and then he started watching through the window of his chamber and found some young Advocates including the contemner Tapan Roy using abusive words towards the SDJM. The learned Munsif has also, in his statement, given out the abusive languages hurled at the SDJM at that time which we refrain from quoting here as these are unquetably indecent. The learned munsif has also stated that he found some Mohorars of the Court including the Mohorars of Tapan

Roy abusing in the language quoted by him which however for the sake of decency we refrain from reproducing here. The learned Munsif has then stated in his statement that he became afraid and could not dare to come outside his chamber. So, that was the effect on another Judicial Officer while discharging judicial function in the same station in a different Court room in the neighbourhood of the Court of SDJM. not only that the learned Munsif could not carry on his judicial function by reason of the situation created by the contemnors but he became mortally afraid and did not dare to come out of his chamber on seeing what was being done by the contemnors. The interference with the administration of justice by reason of the contumacious vandalism of the contemnors was thus not only confined to the Court of the SDJM where the contemnors carried on their contumacious operation. But it also directly affected the other Court, namely, the Court of the Munsif. The acts of the contemnors were thus a flagrant interference with the administration of justice in general in addition to the effect produced on the Court that was the direct target of attack of the contemnors. The incident was also reported in some of the widely circulated dailies of the State, namely, the Bartaman and the Ananda Bazar Patrika of the 19th December and 20th December, 1996 respectively. The effect of the contumacious conduct of the contemnors was therefore bound to have a widespread demoralising reflection upon the entire mechanism of the administration of justice in the State as well as in the public mind and this Court therefore as the guardian of the administration of justice in the State cannot afford to take a lenient view of the matter else the same is bound to perpetuate a demoralising effect on the justice delivery system as a whole and in the public mind as well thereby delivering a mortal blow to the vitality and efficacy of the administration of justice which is as much necessary for the nourishment and survival of the rule of law in a democratic set up.

4. Before we proceed to consider the apology tendered by the three contemnors we formally record our finding that they are guilty of committing criminal contempt of Court by doing whatever they did as reported by the SDJM, Ghatal and as confirmed by the CJM by enquiry: Having regard to the facts, circumstances and the grave nature of the contempt this is however not considered to be at all a fit case for dropping the proceedings only on the ground that the contemnors have tendered apology. For upholding the majesty of law and justice and for retrieving

public confidence in the efficacy and potency of the judicial administration as well as in the responsive role of this Court as the guardian of the administration of justice in the State and for affording necessary protection to the operational safety of the judicial machinery, it is considered absolutely necessary to deal with a case of this nature with due firmness so that the same may have a message of its own for deterring the recurrence of such mis-adventures. The exercise of summary power to punish for contempt, it must be borne in mind, is a support process of the mechanism of socio-judicial defence.

5. Here we may recall certain decisions of Courts in dealing with criminal contempt committed by lawyers. The Supreme Court in *re, Vinay Chandra Mishra*, : 1995 CriLJ3994 , after convicting the contemnor who was an Advocate and Chairman of the Bar Council of India, in spite of apology tendered by the contemner awarded a sentence of imprisonment for six weeks with suspension of his practice as an Advocate and other consequences and also directed that the sentence would remain suspended for four years and might be activated if the contemnor was convicted for any other offence of contempt of Court within the said period. In *R.K. Garg v. State of H.P.*, AIR 1991 SC 1382: (1981 Cri LJ 1029), the Supreme Court in view of the unconditional apology tendered by the contemnor who was a practising lawyer reduced the sentence of six months imposed by the High Court, to imprisonment for one month and enhanced the fine from Rs. 200 to Rs. 1,000. In the case reported in *re: Ajay Kumar Pandey* : 1997 CriLJ231 , also the contemner was a practising Advocate and also lastly tendered unconditional and unqualified apology. In paragraph 45 of the said decision the Supreme Court observed thus:-

The jurisdiction of this Court under Article 129 of the Constitution is independent of the Contempt of Courts Act and the power under Article 129 cannot be denuded, restricted or limited by the [Contempt of Courts Act, 1971](#). Thus there is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction. But we do not intend to travel far and beyond.

Similar provision as contained in Article 129 relating to Supreme Court is also there in Article 215 relating to the High Court. The aforesaid observations of the Supreme Court confirm the view expressed by a Division Bench of this Court in, *Ashoke Kr. Rai v. Ashoke Arora*, 1992 C Cr LR (Cal) 187 (Para 5) that the constitutional guarantee regarding the powers of the High Court inherent in it as a Court of record, as contained in Article 215, is rather absolute in term and is not subject to any ordinary legislation, irrespective of the question whether this constitutional guarantee comes by way of recognition or by way of grant of contempt jurisdiction. In this said decision of the Supreme Court in re: *Ajay Kumar Pandey* : 1997 CriLJ231 the Supreme Court after convicting the contemner for criminal contempt sentenced him to undergo imprisonment for a period of six months with the direction that on serving the sentence for two weeks, the remaining sentence would stand suspended for a period of two years and might be activated in case the contemner was convicted for any other offence of contempt of Court within the said period. It was further directed that the contemnors would be taken into custody forthwith but would be released after two weeks, to be taken into custody again if and when his remaining sentence would stand activated. We would also refer to the Full Bench decision of the Delhi High Court in '*Court of its own Motion v. B.D. Kaushik*, 1993 Cri LJ 336. There also certain Advocates faced charge of criminal contempt. They also tendered unqualified apology. Taking the totality of the circumstances into consideration, including the outrageous incident and unqualified apology, the High Court instead of sentencing the contemnors at once wanted to further watch their conduct and behaviour for a period of one year. It was observed by the High Court in that connection that, before we part with, we would however, repeal any act which would amount to contempt of Court or undermining the judiciary, they would be called upon to appear in the Court to receive the sentence, but if they maintained orderly, good and disciplined behaviour and did not indulge themselves in the repetition of such acts within the stipulated period, then the rule would stand discharged on the expiry of the period.

6. Having regard to the totality of the facts and circumstances in our present case including the apology tendered by the contemnors as well as the extent of criminality of the contempt we pass the following order:

7. The contemnors are sentenced to simple imprisonment for four months each. The contemnor No. 1 Sri Japan Roy is also sentenced to a fine of Rs. 1,000/- (one thousand), in default, to simple imprisonment for two months more. The contemnor No. 2 Sri Swapan Adhikary and the Contemner No. 3 Sri Somenath Chatterjee are also sentenced to a fine of Rs. 500/- (five hundred) each, in default, to simple imprisonment for one month more. The fine imposed shall be forthwith deposited with the Registrar, Appellate Side, failing which the default-clause sentence of imprisonment will be enforced. As regards the substantive sentence of imprisonment for four months the same will however remain suspended for a period of two years on condition that during this period the contemnors shall keep the peace and be of good behaviour, and in case of any violation of this condition the suspended sentence may be activated under the direction of this Court. If not so activated, the suspended sentence however shall stand remitted on the expiry of the said period of two years, and the Rule shall also stand disposed of accordingly at that point of time.

8. Before we part with, we would however like to record our deprecation of the totally distorted reporting of the incident to the Bar at Ghatal. It was also not proper for the Bar at Ghatal to take a resolution for boycott of the Court, However we do not want to proceed further in this regard with this expectation that in future the local Bar at Ghatal will exercise due restraint, and circumspection in such matters. The fine realised as directed above shall be paid by the Registrar. A.S. to Bharat Sevashram Sangha for utilising the same for charitable or relief purposes.