

In Re: R.S. Gupta

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Court : Himachal Pradesh

Decided On : Sep-26-1991

Reported in : 1992CriLJ2265

Judge : Kamlesh Sharma and; D.P. Sood, JJ.

Acts : Code of Civil Procedure (CPC) - Order 39, Rules 1 and 2; ;Indian Penal Code (IPC) - Sections 352, 356 and 500

Appeal No. : Criminal Contempt Petition No. 2 of 1990

Appellant : In Re: R.S. Gupta

Advocate for Def. : M.S. Chandel, Asstt. Adv. General

Advocate for Pet/Ap. : M.C. Mandhotra, Amicus Curiae

Disposition : Petition dismissed

Judgement :

Kamlesh Sharma, J.

1. This Contempt Petition was received from Sh.A.C. Thalwal, Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib District Sirmaur, complaining that respondent, R.S. Gupta, has committed criminal contempt of his Court by refusing to accept the stay order and commenting to the Bailiff that 'the officials of

the Court accept bribe of Rs. 10/-and keep running after the people', in the presence of 40 or 50 people, the stay order was issued on 22nd January, 1990 in a Civil suit titled Mehar Singh v. Mandir Thakur Dawara Dei Jee Sahiba, Paonta Sahib, through Commissioner (Deputy Commissioner) Sirmaur, of its Prabandhak Committee restraining the defendant from auctioning the suit land till further orders. The respondent, who was then posted as Sub-Divisional Magistrate, Paonta Sahib, was holding the auction on the spot.

2. When the present petition came up for orders before this Court on 4th June, 1990, notice to show cause was issued to the respondent that why proceedings for having committed contempt of Court be not initiated against him, the respondent filed his reply-affidavit dated 11-7-1990 denying the allegation that he had uttered the incriminating words attributed to him in the petition. He has admitted that he was holding auction as Sub-Divisional Officer (Civil) and as one of the members of the Committee along with the other members of the Committee and the copy of the stay order was shown to him. According to him, since stay order was not addressed to him but to the Commissioner (Deputy Commissioner, Sirmaur), he requested the Bailiff to deliver the same to the proper authority. Any how, the respondent stopped further proceedings of auction on his coming to know of the stay order.

3. On finding that the respondent had disputed the questions of facts in his reply-affidavit this Court vide its order dated 10th August, 1990, sent copy of the reply-affidavit to Sub-Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib with the direction that a rejoinder from the Bailiff concerned be filed through Sh. M.C. Mandhotra who was appointed amicus curiae in the case by the Court. After affidavit-in-rejoinder was filed by the Bailiff, this Court vide its order dated 14-11-1990 thought it necessary to record the evidence and directed the Bailiff to submit a list of witnesses required to be examined in support of the reference through the court of Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib. On receipt of list of witnesses, this Court ordered summoning of witnesses named in the list and also directed the Bailiff, Jasmer Singh, and the Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib, Sh. A.C. Thalwal, to be present, on the date to be fixed for evidence, for recording their statements. The

respondent was also asked to be present in person. Records of the Civil suit in which the Bailiff made the original report was also summoned. On 20-3-1991, statements of S/Sh. A.C. Thalwal, Jasmer Singh and Kabul Singh were recorded. The other two witnesses, S/Sh. Harjit Singh and Amolak Singh were present but they were given up by Sh. M.C. Mandhotra, Advocate. It was ordered that the case be listed for recording respondent's evidence. Thereafter, on 15th May, 1991, this Court decided to follow the procedure of a warrant case and the evidence already recorded was considered as preliminary evidence in view of the previous orders dated 10th August, 1990 and 14th November, 1990 that since questions of facts stood disputed, evidence be recorded. The witnesses S/Sh. Gurdev Singh, Raj Nand and Rupa Nand, present on behalf of the respondent, were discharged. Thereafter, arguments were heard to decide whether to proceed further with the case or not.

4. From the averments made in the petition, the reply-affidavit and the rejoinder, it appears that there are two parts of the complaint; one that the respondent refused to receive the stay order and the other that the respondent made the remarks that Court officials accept bribe of Rs. 10/- and keep running after the people. No doubt, refusing to accept an injunction order is to interfere with the course of justice which tantamounts to criminal contempt. Courts' orders cannot be complied with if the party refuses to acquire its knowledge by accepting its service. But in the present case, the question arises whether the respondent has refused to accept stay order with the intention to thwart its implementation. Admittedly, Mandir Thakur Dwara Dei Jee Sahiba through its Commissioner (Deputy Commissioner, Sirmaur) was party respondent in the application under Order 39 Rules 1 & 2, C.P.C. Therefore, the respondent is right that the order was not addressed to him and he had asked the Bailiff to serve it on the authority concerned, that is, the Deputy Commissioner, Sirmaur. This has been admitted by Jasmer Singh Bailiff in his cross-examination. It is also admitted that after noticing the contents of the order, the respondent stopped further proceedings of auction of the land in question which proves that he had no intention either to disobey the order of the Court or to obstruct the Bailiff from performing his duty to effect service of the stay order. Therefore, we hold that in the facts and circumstances of the present case, the act of the respondent to refuse to receive the stay order

does not amount to Criminal Contempt.

5. So far as the second part of the complaint is concerned, it is to be examined whether the statement of Jasmer Singh Bailiff inspires confidence and, if yes, whether by making the comments the respondent has committed criminal contempt. It is correct that Jasmer Singh Bailiff made his report Ex. C.W-1/B on 22nd January, 1990 on the back of the stay order, Ex. C. W-1/A. It is also signed by two witnesses, S/Sh. Harjit Singh and Amolak Singh but surprisingly their signatures are appended first and thereafter the report is written by the Bailiff. This report was to be put up before the Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib, District Sirmaur, Sh. A.C. Thalwal, on 22nd February, 1990, when the civil suit was fixed for further hearing. But as Sh. A.C. Thalwal was on leave on that day the case was listed before him on 6-4-1990 after proper order, when he passed the order referring the matter to this Court. Sh.A.C. Thalwal has stated this in his statement and admitted that he had made this reference after applying his mind that prima facie criminal contempt is made out. On the same day, that is, 6-4-1990, on similar allegations, Jasmer Singh Baliff also made a private complaint against the respondent under Sections 500, 352 and 356, I.P.C. The Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib, Sh. A.C. Thalwal held six hearings in that complaint and recorded evidence but ultimately transferred it to the Chief Judicial Magistrate, Nahan, on 24-12-1990. This complaint was dismissed for non-prosecution on 11-1-1991. In the private complaint, Ex. C.W.-2/C, Jasmer Singh Bailiff has reiterated his allegations. But in his statement before the Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib, he has improved his version by adding that the respondent asked him to go away failing which he would get him arrested by the Police. According to him, the respondent also told him that he was nobody to interfere in his work. This part of the statement, Marked A to A in Ex.C.W-2/ B, was put to Jasmer Singh Bailiff in cross-examination. He has admitted this part of the statement and also that he did not record it in his complaint Ex. C.W-2/C and the report Ex.C.W.-1/B. The evidence of S/Sh. Harjit Singh and Amolak Singh, who have appended their signatures on the report, Ex.C.W-1/B, has been withheld with the result that the veracity of the statement of Jasmer Singh Bailiff cannot be tested. Kabul Singh has corroborated the statement of Jasmer Singh Bailiff to the extent that 'the

S.D.M. refused to receive the notice and said that Court peons are after serving the notices by accepting bribe of Rs. 10/-. This witness had also appeared before the Sub Judge-cum-Sub Divisional Judicial Magistrate (I), Paonta Sahib in the private complaint and had given an exaggerated version that when Jasmer Singh Bailiff told the respondent that he had brought stay order from Judge Sahib, the respondent retorted that whether he was superior or his officer. Kabul Singh has admitted that he made this statement, portion A to A in Ex.C.W-3/A.

6. In this backdrop, the statements of Jasmer Singh and Kabul Singh do not inspire confidence to come to a definite conclusion that the respondent had made the comments being attributed to him. Assuming that these comments were made by the respondents, it cannot be said that he had the motive to obstruct the bailiff from effecting service of the stay order on the competent authority. As already noticed above, the respondent himself asked the Bailiff to serve the stay order on the Deputy Commissioner, Sirmaur, to whom it was addressed and also stopped further proceedings of the auction. There is no doubt that obstructing a process-server in the execution of his duty is contempt of court and in order to vindicate the dignity of the Court and to prevent undue interference in the administration of justice, he must be protected. But before taking any action, the Court must come to a definite conclusion, on the facts of each case, that the process-server was, in fact, abused or maltreated while he was engaged in the execution of his duty with a motive to cause obstruction in order to restrain him from affecting service of the orders of the Court. In the present case, this test has failed. In view of these findings, we need not go into the point whether the alleged remarks made in respect of a Court official amount to lowering down the dignity of the Court or not.

7. In the result, we hold that from the preliminary evidence, no prima facie case of commission of criminal contempt by the respondent is made out and the notice to show cause issued to him is discharged.

8. Before parting with, we place on record our appreciation of the assistance rendered by Sh. M.C. Mandhotra, amicus curiae.