

CASE NO.:
Appeal (crl.) 445 of 1993

PETITIONER:
Radha Mohan Lal

RESPONDENT:
Rajasthan High Court (Jaipur Bench)

DATE OF JUDGMENT: 11/02/2003

BENCH:
Y.K. Sabharwal & H.K. Sema

JUDGMENT:

J U D G M E N T

[With Criminal Appeal No.449 of 1993]

Y.K. Sabharwal, J.

By the impugned judgment and order dated 31st March, 1993, the High Court has come to the conclusion that the appellant Radha Mohan Lal (Criminal Appeal No.445/93) and his advocate, appellant Sualal Yadav (Criminal Appeal No.449/93) have committed the contempt of court. Both have been sentenced to three months' simple imprisonment each besides fine of Rs.1,000/- each and in default of payment of fine, to further suffer simple imprisonment for 15 days.

The basis for initiation and punishment for contempt of court is the averment made in para 4 of the application dated 18th September, 1991 that had been filed before a learned Single Judge of the High Court in a civil revision petition which was listed before the learned Judge. The said para 4 reads as under :

"That apart from it, the undersigned has been informed by his client-Shri Radha Mohan Lal Vakil Ex. Chairman of the Municipal Council, Jaipur, that he along with other non-petitioners have moved a complaint in writing against Hon'ble Shri R.S. Kejriwal to the Hon'ble Chief Justice requesting him to list the above revision before a Bench of which Hon'ble Shri R.S. Kejriwal is not a member as they have reasonable grounds to believe that no impartial justice would be imparted from this Bench.

In the light of the above exceptional and extraordinary facts and circumstances of the matter, the above revision may kindly be allowed to be listed before a Bench not constituted of the Hon'ble Mr. Justice Kejriwal as the non-petitioners are known to have lost faith in this Bench for reason obvious. In case the above revision is not allowed to be listed before another Bench the applicant may be allowed sufficient time to approach the Supreme Court for transfer of this case."

The revision petition arose out of an interim order passed in a civil suit that had been filed by appellant Radha Mohan Lal and four others in representative capacity allegedly to ensure that access to the temple which was the subject matter of the suit is not obstructed as a consequence of encroachments by the Rajasthan Sports Council. The interim order granted in their favour had been assailed in the revision petition. It is claimed that some observations made by the learned Judge on 13th September, 1991 in course of hearing of arguments led to about 50 senior citizens representing to the Chief Justice that the petition be heard by some other Judge. On 18th September, 1991, when the matter came up for hearing before the learned Single Judge, the fact of representation having been made to the Chief Justice was given out and this led to the filing of the application dated 18th September, 1991. Ultimately, the averments made in the application led to initiation of proceedings for contempt of court and the finding of contempt and punishment on the appellants as aforesaid. Appellant Sualal Yadav was the advocate for Radha Mohan Lal both in the revision petition as also in the contempt petition.

When Criminal Appeal No.445 of 1993 came up for hearing for the first time before this Court on 3rd June, 1993, appellant Radha Mohan Lal, who was present in Court, gave an undertaking to this Court through his counsel that he shall file in this court on affidavit with

hin one week an unconditional apology for the allegations made by him against Hon'ble Mr. Justice R.S. Kejriwal of the High Court of Rajasthan and shall appear in person in open court before the Hon'ble Judge and shall tender such apology to him. Accepting that undertaking, this Court directed stay of the impugned order. In terms of the order dated 3rd June, 1993, the appellant on 9th June, 1993 filed his affidavit tendering unconditional and without any qualification his apology for any statement made or pleaded before Hon'ble Mr. Justice R.S. Kejriwal in the pending revision petition. It further appears that the appellant, in accordance with his undertaking, also tendered apology before Hon'ble Mr. Justice R.S. Kejriwal.

Learned counsel for the appellant, Mr. Jagdeep Dhankar, has very candidly not made any attempt to justify the actions of Radha Mohan Lal before the High Court in filing the application as aforesaid. Learned counsel has only argued for acceptance of the apology. Learned counsel submits that the appellant has impressive and unimpeachable credentials of being a freedom fighter and a vakil (an advocate) and Chairman of Jaipur Municipal Council. It has been further submitted that he is an old man of 82 years of age suffering from serious heart ailment and for quite some time his mobility is limited to his room under medical prescription. The appellant is a senior citizen who had no malice towards the Hon'ble Judge.

It is contended that during his long distinguished career, the present episode was the result of a single momentary derailment that was neither due to deliberation nor due to any motivation and once the matter was before this Court, the appellant, on his own, even before hearing, tendered unqualified apology and also volunteered to tender an unqualified and unconditional apology before the Hon'ble Judge of the High Court in open Court which was done immediately after the reopening of the High Court after summer vacation in the year 1993.

Having regard to the aforesaid facts, it appears that although the apology has been tendered after the appellant had been found guilty of contempt of court and after the High Court had inflicted the imprisonment on him but still the apology seems to be sincere and not to ward of the punishment. We accept the contention of Mr. Dhankar that the apology here is evidence of real contrite as also of his consciousness of wrong done by him. In the case of M.Y. Shareef & Anr. v. The Hon'ble Judges of High Court of Nagpur & Ors. [(1955) 1 SCR 757], a Constitution Bench of this Court accepted the apology that was tendered before this Court for the first time.

In view of the aforesaid, while we uphold the impugned judgment holding that the appellant Radha Mohan Lal committed contempt of court but accepting the apology, we set aside the punishment of simple imprisonment as also the fine imposed on him.

The case of appellant Sualal Yadav is, however, different. He has persisted with the same approach before this Court as he had before the High Court. Unfortunately, he labours under an erroneous impression that it is not only his duty but a constitutional obligation to say and submit before the Court whatever he is instructed by his client. He submits that everyone has liberty to have faith or not on a particular judge. A grievance was also sought to be made by him that only Radha Mohan Lal was picked up and not others similarly placed and likewise contempt proceedings were initiated against him and not other advocates.

The submissions are wholly untenable. We have already noticed that Radha Mohan Lal, realizing his mistake, tendered unconditional and unqualified apology even before the matter was heard before this Court. He has also tendered apology in open court before the learned judge of the High Court. The application was only signed by Radha Mohan Lal and this appellant and, therefore, there is no substance in the grievance why proceedings were not initiated against others. Even otherwise, such a contention is entirely misplaced. It is unfortunate that despite having spent so many years in legal profession, the appellant persists with his erroneous impressions about the duties of the members of the Bar to say whatever they are asked by their clients to say without any liability despite the settled position to the contrary.

In Shareef's case (supra), the Constitution Bench held that the misconception in a section of the Bar has to be rooted out by a clear and emphatic pronouncement and it should be widely made known that counsel who sign applications or pleadings containing matter scandalizing the Court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court, and that it is no duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. Hope expressed in Shareef's case that this kind of conduct will not be repeated by counsel in any High Court in this country, and no more test cases of this kind would have to be fought out has been belied despite passage of nearly 50 years.

The liberty of free expression as was sought to be contended by Mr. Sualal Yadav can not be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary. The imputation that was made was clearly contemptuous. The effect is lowering of the dignity and authority of the Court and an affront to the majesty of justice.

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In *Shamsher Singh Bedi v. High Court of Punjab & Haryana* [(1996) 7 SCC 99], this Court held that an advocate cannot escape his responsibility for drafting a scandalous notice to a Magistrate on the ground that he did so in his professional capacity.

An advocate is not merely an agent or servant of his client. He is an officer of the Court. He owes a duty towards the Court. There can be nothing more serious than an act of an advocate if it tends to impede, obstruct or prevent the administration of law or it destroys the confidence of the people in such administration. In *M.B. Sanghi, Advocate v. High Court of Punjab & Haryana & Ors.* [(1991) 3 SCC 600] while deciding a criminal appeal filed by an advocate against an order of the High Court, this Court said :

"The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence."

In view of clear and well settled legal position in respect of the rights and duties of advocates, we unhesitatingly confirm the finding of the High Court that the appellant, *Sualal Yadav*, committed contempt of court.

The question now to be considered is that of sentence. The appellant has been sentenced to three months' simple imprisonment with fine of Rs.1,000/- and in default of payment of fine to further suffer simple imprisonment for 15 days. It is painful to punish anyone and more particularly a member of legal profession for contempt of court but in order to secure the ends of justice, in extreme cases, it becomes the duty of the Court to do so. Ordinarily, on the facts of the case as abovenoticed, we would have been very reluctant to interfere with the sentence imposed by the High Court but for the age of the appellant. He is a senior citizen. His age is 81 years. We are told that he is hardly in active practice anymore. He is stated to have already undergone one day imprisonment. Despite the fact that he has been reckless and persistent, yet we think that object of punishment will be served by reducing three months' simple imprisonment to one already undergone by the appellant while maintaining the fine and the imprisonment in default of payment of fine.

Criminal Appeal Nos.445 and 449 of 1993 are, thus, disposed of in the above terms.