

CASE NO.:
Writ Petition (crl.) 91 of 2008

PETITIONER:
LEILA DAVID

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 20/03/2009

BENCH:
DR. ARIJIT PASAYAT & ASOK KUMAR GANGULY

JUDGMENT:
JUDGMENT

ORDER

Criminal Original Jurisdiction : Writ Petition (Crl.) D. No (S)
(D22040/2008)..... Of 2009

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA.

WITH

Writ Petition (Crl.) No.....of 2009 (D24281/2008)

Writ Petition (Crl.) No..... Of 2009 (D25985/2008)

Suo Motu Contempt Petition (Crl.) No. 3/2008 @ Writ Petition (Crl.)

Nos..... Of 2009 (D22040, 24281 & 25985/2008)

Suo Motu Cont. Pet. c No.225/2008 in SLP(C) 8573/
2006

The orders of the Court was delivered by

DR. ARIJIT PASAYAT J.

"Today when these matters were taken up suddenly the contemnors started shouting and used very offensive, intemperate and abusive language and even one had gone to the extent of saying that the Judges should be jailed for having initiated proceedings against them. They said that Judges are not interfering with orders by various Judges of the Bombay High Court, are to be punished for not taking care of their so-called fundamental rights. Even one of them threw a chappal at the Judges. This happened in the presence of the learned Solicitor General of India, two learned Additional Solicitor General and a large number of learned counsel including the President of the Supreme Court Advocate of Record Association.

This conduct is contemptuous. There is no need for issuing any notice as the contemnors stated in open Court that they stand by what they have said and did in Court. The Registrar is directed to take the following four persons into custody from the Court premises:

1. Annette Kotian D/o A. Kotian, R/o 1. Madhav Baug, Brahim Society, Naupada Thana - 400602; (aged 23 years)
2. Dr, Sarita Parikh D/o Kishore Bansilal R/o F.16, Juhu Apartments, Juhu Road, Juhu Mumbai -49; (aged 31 years)
3. Leila David W/o Neil David R/o 22, West View 1st Pastalane, Colaba, Mumbai -5; (aged 75 years)
4. Pavithra Murali D/o Murli R/o Jeevan Akash Forjett Street, Tardev, Mumbai -36 (aged 23 years)
They shall suffer three months simple imprisonment.
Rest of the matters shall be listed after three weeks."

ASOK KUMAR GANGULI, J.

Today in open Court when Item No. 37 was called on, the petitioners appeared in person. Several ladies appeared along with a gentleman and they addressed the Court in very intemperate and offensive language. The address was more against the Members of the Bench than on the merits of the case. To say the least, this is unfortunate. The persons who appeared, became very agitated and one of them threw a footwear at the Bench. At the time the learned Solicitor General of India was present in Court and two other learned Additional Solicitors General were also present along with a large number of advocates. Ultimately, those agitated persons were actually taken out of the Court by some other Advocates and by security personnel.

To my mind this is prima facie an incident where provisions of Section 14 of the Contempt of Courts Act, 1971 (hereinafter the Act) can be invoked.

Learned Justice Pasayat called for the Registrar (Judl.) of this Court and was pleased to pass an order to the following effect:

"Today when these matters were taken up suddenly the contemnors started shouting and used very offensive, intemperate and abusive language and even one had gone to the extent of saying that the Judges should be jailed for having initiated proceedings against them. They said that Judges are not interfering with orders by various Judges of the Bombay High Court, are to be punished for not taking care of their so-called fundamental rights. Even one of them threw a chappal at the Judges. This happened in the presence of the learned Solicitor General of India, two learned Additional Solicitor General and a large number of learned counsel including the President of the Supreme Court Advocate of Record Association.

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They shall suffer three months simple imprisonment.
Rest of the matters shall be listed after three weeks."

His Lordship by this order directed the Registrar (Judl.) to send persons named above to prison, as according to His Lordship, they have acted in an indecent manner which is apparently contumacious in the face of the Court. His Lordship thus also sentenced them as above.

Just before that, the learned Solicitor General has addressed the Court and suggested that instead of taking those persons into custody, the Court may restrain them from entering any Court premises except in cases where they have to answer any charge or defend themselves. In support of the said contention the learned Solicitor General of India relied on Arlidge, Eady and Smith on Contempt, Second Edn. 1999 paragraph 14- 106:

"14-106: Against that background, the Vice- Chancellor concluded that it would be quite inappropriate to deal with the matter by way of imprisonment, the purpose of which in such a case "would be to mark the displeasure of the Court about the contempt that had been committed and to punish the perpetrator"". He said that a person suffering from the mental

infirmity in question did not require punishment, and the Court's displeasure had been connoted by the judgments the Vice-Chancellor had given. He focused therefore rather upon the need to protect court officials in the future, both in the High Court and in county courts generally, and granted injunctions restraining the bringing of any action of making any claim in an action already brought except by a next friend, the persons were also restrained by injunction from "entering any court premises save as may be necessary to answer sub-poenas."

To that suggestion of the learned Solicitor General, I pointed out in open Court that in our country the law of contempt is not dependent solely on Common law principles, but the exercise of contempt jurisdiction in India is regulated in accordance with the provisions of the said Act. It is of course true that the Supreme Court has its inherent power. Apart from the power conferred on it under the said Act, it has inherent power under Art. 129 of the Constitution to punish for contempt of itself. This Court also has power under Article 142 of the Constitution.

In matters of initiating a contempt proceeding against erring litigants and where contempt takes place in the face of the court, the procedure has been statutorily prescribed under Section 14 of the said Act. The said Section is based on the Recommendation of the Sanyal Committee and paragraph 4 of the Recommendation on which Section 14 has been modelled may be very instructive and is set out hereunder:

"4. From what we have stated, it is clear that it is not wise to modify in any manner the summary powers of Courts to deal with contempts committed in their presence. We, therefore, feel that the Court should, in cases of criminal contempt committed in its presence, be able to deal with the contempt forthwith or at any time convenient to it after informing the person charged with contempt orally of the charge against him and after giving him an opportunity to make his defence to the charge, pending determination of the charge, the person charged with contempt may be detained in such custody as the Court deems fit. Wherever the matter is not disposed of forthwith, we also feel that the person charged should be enlarged on bail pending determination on the execution of a bond for due appearance for such sum and with or without sureties as the Court considers proper. We are happy to note that this is generally the practice."
(emphasis supplied)

The relevant provisions of Section 14(1) of the Said Act run as under:

"S. 14. Procedure where cotempt is in the face of the Supreme Court or a High Court. - (1) when it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall-

- (a) cause him to be informed in writing of the contempt with which he is charged;
- (b) afford him an opportunity to make his defence to the charge;
- (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person as may be just."

It is clear from a perusal of Section 14(1) of the said Act that in initiating a contempt proceeding and when contempt is allegedly committed

in the face of the Court, the Court has to inform the alleged contemnors in writing the charge of contempt and then afford them an opportunity to make their defence to the charge and thereafter on taking such evidence as may be necessary or as may be offered by the persons and after hearing them, proceed either forthwith or after adjournment to determine the matter of the charge and may make such order for the punishment or discharge of such persons as may be just.

These four steps provided under Section 14(1) of the Act are mandatory in nature.

These steps have been engrafted under the Statute following Common Law traditions in other countries and also possibly keeping in view the age old principle that in contempt proceedings, the Court acts both as Judge and an accuser, rolled into one, and the Court must act with utmost restraint and caution and must follow all the procedural requirements since the liberty of persons is involved.

Under Section 14(4) of the Act, the Court may temporarily take the alleged contemnor in custody but it cannot imprison him/her by way of punishment without following the safeguards under sub-section 14(1) of the Act.

Mere unilateral recording in the order that the contemnors stand by what they said in Court is not a substitute for compliance with the aforesaid mandatory statutory requirement.

Apart from that at that time when the alleged offending acts were committed by those persons the Court's atmosphere was so surcharged that no such offer could be validly made.

In other Common law jurisdictions where such clear statutory provisions are not there, same principles of caution which is akin to Section 14 of the said Act have been judicially evolved while dealing with a case of contempt in the face of the Court. Reference in this connection may be made to the decision of the High Court of Australia where in a case it has been laid down:

"It is well-recognised principle of law that no person ought to be punished for cotempt of Court unless the specific charge against him be distinctly stated and an opportunity of answering is given to him....The gist of the accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations. The charge having been made sufficiently explicit, the person accused must then be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplifications of his evidence and any submissions of fact of law, which he may wish the Court to consider as bearing either upon the charge itself or upon the question of punishment. Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon. (Coward V. Stapleton (1953) 90 CLR 573, 579-80).

Similar principles have been laid down by the Supreme Court of Canada in B.K. Vs. The Queen:

"There is no doubt in my mind that he was amply justified in initiating the summary contempt procedures. I, however, find no justification for foregoing the usual steps, required by natural justice, of putting the witness on notice that he or she must show cause why they would not be found in contempt of court, followed by an adjournment which need be no longer than that required to offer the witness an opportunity to be advised by counsel and, if he or she chooses, to be represented by counsel. In addition, upon a finding of contempt there should be an opportunity to have representations made as to what would be an appropriate sentence. This was not done and there was no need to forego all these steps." (1996) 129 DLR (4th) 500)

Reference in this connection may be made to a decision of this Court in Dr.L.P. Misra Vs. State of U.P. reported in (1998) 7 SCC 379.

A somewhat similar incident, may be of a graver import, happened in Allahabad High Court on 15.7.1994 when a group of Advocates entered the Court room, shouting slogans and asking the Court to stop its proceedings. As the Court continued, the advocates went on to the dais and tried to manhandle the Judges and uttered very abusive language against one of the Members of the Bench. The abusive utterances were:

"Tum sale with jaaon nahien to jann se maar daalenge. Tumne Chief Justice se kaha hai ki Lucknow ke Judges 5000 rupya lekar stay grant karte hain aur stay extend karte hain. Aaj 2 baje tak agar tum apan boriya bistar lekar yahan se nahien bhag jaate ho to tumhe jann se maar daalenge."

The learned Judges retired to their Chambers and then re-assembled and passed an order holding the Advocates guilty by imposing sentence of imprisonment and fine. In doing so, the learned Judges invoked the High Court's power under Article 215 of the Constitution. Against that order, an appeal was filed to this Court.

It may be noted that power of the High Court under Article 215 of the Constitution is in similar terms as the power of the Supreme Court under Article 129 of the Constitution.

The learned three Judge Bench of this Court in L.P. Misra (supra) set aside the order of Allahabad High Court as the same was passed without following the procedure prescribed under the law. In doing so the learned Judges referred to Section 14 of the said Act and the rules of Allahabad High Court Rules (para 6 page 381 of the report). Those rules and the provisions of Section 14 (1)(a)(b)(c)(d) of the said Act are almost similar in terms. This Court also held that the power of the High Court under Article 215 has to be exercised in accordance with the procedure prescribed by law (Para 12 page 382 of the report).

The safeguards statutorily engrafted under Section 14 of the Act are basically reiterating the fundamental guarantee given under Article 21 of the Constitution. This guarantee which possibly protects the most precious fundamental right is against deprivation of one's personal liberty "except according to procedure established by law". This Court, being the guardian of this right, cannot do anything by which that right is taken away or even abridged and especially when the Court is acting suo motu.

For these reasons in the instant case, with great respect to His Lordship Justice Pasayat, I cannot agree with His Lordship's view of sending these persons to prison for having allegedly committed contempt in the face of the Court without following the mandate of Law under Section 14(1) (a) (b) (c) and (d) of the Act.

I am of the view that this Court's power under Article 142 of the Constitution is not meant to circumvent clear statutory requirements.

The opening words of Article 142 shows that the Supreme Court shall exercise its power under the said Article "in exercise of its jurisdiction". Therefore, the jurisdiction of the Supreme Court in initiating proceeding for contempt under Section 14 of the said Act must be exercised following the statutory dispensation. In other words, Supreme Court cannot, while exercising its jurisdiction under Article 142, render salutary provisions of Statute nugatory and otiose. These provisions as noted above give effect to the fundamental guarantee under Article 21 of the Constitution.

Therefore, in this view of the matter, I cannot agree with the view expressed in the order of His Lordship, Justice Pasayat, for sending the

alleged contemnors to prison for allegedly committing the contempt in the face of the Court without following the mandate of the Statute under Section 14. I, therefore, cannot at all agree with His Lordship's order by which sentence has been imposed. I am of the view that the liberty of those persons cannot be affected in this manner without proceeding against them under Section 14 of the Act. In my opinion Section 14 is in consonance with a person's fundamental right under Article 21.

By the Court : In view of the difference about the procedure to be adopted the matters may be placed before the Hon'ble the Chief Justice of India. In the meantime the contemnors to remain in custody till the matter is heard by an appropriate Bench.

JUDIS