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PREM SURANA

v.

ADDL. MUNSHI AND JUDICIAL MAGISTRATE AND ANR.

AUGUST 13, 2002

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[U.C. BANERJEE AND B.N. AGRAWAL, JJ.]

*Contempt of Courts Act, 1971 :*

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*ss.2(c) and 15(1)—Criminal contempt of subordinate court—Cognizance of by High Court—Advocate, an accused in a criminal case before Judicial Magistrate, abusing and slapping the Judicial Magistrate in open court—District Judge referred the matter to High Court—High Court recorded that the statement of the Presiding Officer was to be accepted unless it was proved to be wrong by cogent evidence, and concluded that the act was covered within the definition of criminal contempt—It convicted and sentenced the advocate for 6 months imprisonment—Apology not found genuine or bona fide—Held, the reference made to the High Court was valid and the cognizance taken did not suffer from any legal infirmity—Our justice delivery system would be in a swamp if this conduct of an advocate slapping a Judge in open court goes unnoticed and unpunished—Question of acceptance of any apology or an undertaking of good behaviour does not and cannot arise, neither there can be any question of any leniency as regards the sentence—Observation and conclusions as also findings of High Court concurred with.*

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*Board of Revenue, U.P. v. Vinay Chand Mishra, AIR (1981) SC 723 and Pritam Pal v. High Court of Madhya Pradesh, AIR (1992) SC 902, relied on.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 666 of 1994.

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From the Judgment and Order dated 23.9.94 of the Rajasthan High Court in Crl. Contempt Petition No. 5272 of 1993.

P.N. Mishra, Ms. Shobha and Irshad Ahmad for the Appellant.

Ranji Thomas, Ms. Bharati Upadhyaya and Javed Mahmud Rao, for the Respondents.

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The Judgment of the Court was delivered by

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The instant criminal appeal depicts a rare unfortunate incident concerning a lawyer and thus an Officer of the Court. In the justice delivery system of the country members of the Bar are as much a party thereto as the Judges and it is a closest possible harmony between the Bar and the Bench that can yield the best results in achieving the objectives as enshrined in the Constitution.

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Coming to the facts of the matter under consideration, an Advocate of Jaipur District Court slapped a Magistrate in the open Court upon using most above and unseemly language-the reason being his application for exemption from appearance was disallowed by the Court and issuance of a non-bailable warrant. Incidentally, be it placed on record that there was a criminal proceeding pending in which the concerned Advocate being the appellant herein was an accused and on a date when the matter was fixed for hearing the concerned accused left the Court without permission from the Court by simply taking recourse to an application for exemption from appearance and without waiting for the decision in the matter. The application was, however, dismissed and consequently a non-bailable warrant was issued. The version of the appellant herein and as is available on record seem to be that he was attending the funeral of a friend's father by reason where of he was not in a position to attend the Court. We are not expressing any opinion in that regard. But the circumstances which followed thereafter are not only unwarranted and unfortunate but would shudder the judicial conscience of all and sundry. Members of the Bar has certain responsibility not only towards their clients but to the Court as well and it is the conjoint effort of the Bar and the Bench as noticed above that the administration of justice ought to be had. The justice delivery system envisages the same and there cannot be two opinion on it. The Additional Munsif and Judicial Magistrate, Jaipur City, Jaipur, recorded an order that in fact there was no proper ground for accepting the application for exemption of attendance and therefore the application was disallowed and orders were passed for summoning through arrest warrant and to be produced on 20.12.1993 for opening the proceedings under Section 446 of the Code of Criminal Procedure.

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The report of the Additional Munsif and Judicial Magistrate reads as below :-

After passing the above order, at about 1.25 midday, Advocate Shri Prem Surana who is also an accused in this case, came in the Court and just

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- A after coming started abusing to me, and started to say "How you dared, to disallow our application for exemption of our presence". I told to him that Ashok Agarwal has not passed any order in his personal capacity, but the court has passed the orders even then keeping in view of your intention I will try to consider your case on the next date of hearing: but Shri Surana
- B refuted and continued to abuse: I absolutely kept mum and continued to convince Shri Surana in good manner and Shri Surana in the words of threatening told that I will make complaint to D.J. Saaheb, upon this I told that whatever legal remedy is available with you, are free to do such proceedings, upon this Shri Surana remained in the Court, and in very high speed continued to abuse, and tried to reach on the side of Dias in the left side of mine, on
- C this Court Reader Shri Atmaram Sharma, Ram Behari Verma, LDC and Steno Om Prakash Pandey, Rajesh Mehra came ahead to catch Shri Surana, to whom Shri Surana backed and succeeded in coming ahead towards me and came to dias and gave a slap on my left cheek severely and told that "just come out, I show to you", After this immediately rescuing myself I went to my Chamber, and closed the Kundi of my Chamber in the inner side.
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- The conduct spoken of does not be speak of good behaviour, good gesture neither suits an advocate, a judge has duty to discharge and a judge has passed his order in a manner as he thought fit under the circumstances and no litigant far less an advocate has any right to take law into his own
- E hand and then attack a judge with a slap. It is a slur on the entire judiciary; it is a slur on the justice delivery system of the country.

- The records depict that the district judge vide its letter dated 8-11-1993 referred the matter to the High Court along with the noting and the affidavits of the staff attached to that Court and on receiving the reference, a notice
- F was issued on 9-11-1993 by Division Bench in Criminal Contempt Case No. 5272 of 1993 giving Mr. Prem Surana an opportunity to show cause as to why he should not be punished for committing contempt of the Court. In the meantime, this incident was flashed in various local newspapers and the Rajasthan Higher Judicial Service Officers Association, Jaipur filed a criminal contempt petition (No. 5272/93) against Mr. Prem Surana, advocate. The case
- G was also referred to the same Bench and notice was issued in the second matter as well. The High Court, however, upon consideration of the matter in its entirety came to a conclusion that the act on the part of the appellant herein amounts to lowering the authority of court in the public eyes as also interference with due course of judicial proceedings and thus amounts to
- H scandalising the court. It was not a slap on the face of a Magistrate, but a

slap on the judicial authority itself. The act squarely stands covered within the four corners of the definition of 'criminal contempt'. The High Court while dealing with the matter referred to Section 15 (1) of the Act which otherwise empowers the High Court and the Supreme Court to take cognizance of the criminal contempt, other than the contempt referred to in Section 14, on its own motion or on the motion made by (a) the Advocate General; (b) any other person with the consent in writing of the Advocate General, and take action. A B

The High Court further upon noting the decision of this Court in the case of *Board of Revenue, U.P. v. Vinay Chand Mishra*, AIR (1981) SC 723 recorded its finding to the effect that there is no restriction on the power of the High Court in taking such cognizance. The reference thus made to the High Court was otherwise valid and cognizance taken does not suffer from any legal infirmity. We do record our concurrence therewith as well. C

Be it recorded that the High Court dealt with the matter in all its perspectives and upon consideration of the same recorded that the statement of the Presiding Officer is to be accepted unless it is proved to be wrong cogent evidence. D

This cogent evidence however is not available on record. As such no exception can be taken in regard to the acceptance of the same. Various provisions of the Contempt of Courts Act as well as the provisions of the Indian Penal Code have been taken recourse to and upon reliance on various judgments including that from United Kingdom, came to the conclusion that the apology tendered was not real, sincere or genuine and it was merely an empty formality. The High Court recorded that Mr. Prem Surana has only tried to "play with the word 'apology' in Court like a football in the playground. It shocks the conscience of the Court." E F

The High Court went on to observe that "the prime responsibility of the Court is to keep the fountain of the justice pure. Nobody should be allowed to tarnish the image and the majesty of the Court. Howsoever high he may be or whosoever he may be. Of course, aberrations by lawyers in Court are generally ignored but when it goes to lowering the image of the Court, serious action is to be taken. Having regard to the totality of the circumstances and particularly to the outrageous conduct of Mr. Prem Surana by abusing and slapping the Magistrate in Court, showing of any magnanimity, would not only be injurious to the majesty of the authority but would be proved to be fatal. If justice has an audible voice, then one can hear it crying H

A that Mr. Prem Surana, advocate, has committed contempt of the Court".

B The issue arises as to whether the Judges should be hyper-sensitive in the matter of discharging judicial functions - True the judge should not be hyper-sensitive but that does not mean and imply that they ought to maintain angelic silence also. Immaterial it is as to the person but it is the seat of the justice which needs protection: it is the image of the judicial system which needs protection. Nobody can be permitted to tarnish the image of the temple of justice. The majesty of the Court shall have to be maintained and there ought not to be any compromise of leniency in that regard.

C The High Court found Mr. Prem Surana guilty of committing gross criminal contempt of the court and thus sentenced him to undergo simple imprisonment of six months together with a fine of Rs. 2,000.

D Today, when the matter was taken up, the learned senior counsel Mr. P.N. Mishra with his usual eloquence submitted that his Court ought to be magnanimous enough to set the appellant free from the sentence awarded against him. Mr. Mishra has been candid enough to submit that one cannot probably lend any support to the acts complained, but ascribed the conduct of the appellant herein as a temporary loss of mind and thus resulted in such an act. It has been contended that the appellant is remorseful and even prepared to furnish an undertaking of good behaviour in Court for next five years. Significantly, however, when the apology was tendered before the High Court, the same was not accepted on the ground that the same was not genuine or bona fide. In any event, assuming we are persuaded here to accept such an undertaking-would that by itself obliterate the offence-the answer cannot, however, be in the affirmative.

F The introduction of the Contempt of Courts Act, 1971 in the statute-book has been for the purposes of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. Undoubtedly, a very powerful weapon rests in the hands of the law courts through the statute, and it is also true that the law courts must exercise the same with due care and caution and for larger interest. Contemptuous conduct and obstruction to the majesty of law is the basic reasoning for which the law makers thought it prudent to engraft in the statute-book this particular legislation.

H On the state of the facts, as noticed above, can the Court maintain silence and permit the situation go unheeded? The answer again cannot be

in the affirmative. Our justice delivery system would be in a swamp if this conduct of an advocate slapping a judge in open Court goes unnoticed and unpunished. A

It is at this juncture, the observations of this Court in *Pritam Pal v. High Court of Madhya Pradesh*, AIR (1992) SC 902, seem to be rather apposite, This Court observed :- B

"To punish an advocate for Contempt of Court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the Courts from being deflected or interfered with, and to keep the streams of justice pure, serene and underfiled, it becomes the duty of the Court, though painful, to punish the contemner in order to preserve its dignity. No, one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to Court or Court proceedings interferes with or is calculated to obstruct the due course of justice." C

The slap on the face of the Judicial Officer is in fact a slap on the face of the justice delivery system in the country and as such question of acceptance of any apology or an under taking does not and cannot arise, neither there can be any question of any leniency as regards the sentence. D

The High Court, in our view, has dealt with the matter in its proper perspective and we do feel it expedient to record our concurrence with the observations and conclusions as also findings of the High Court. E

In that view of the matter, this appeal fails and is dismissed.

The bail as granted by this Court on an earlier occasion stands cancelled. The accused - appellant who is present in the Court be taken into custody immediately for undergoing remaining period of sentence. The appropriate police authorities to lodge him in Tihar Jail presently but upon proper intimation to the appropriate authority at Jaipur, the appellant be sent to Jaipur in terms of the earlier directions of the High Court. F

R.P.

Appeal dismissed. G