

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.04.2013

+ **CONT. APP. (C) No. 10/2012**

JHILMIL BRECKENRIDGE

... Appellant

Versus

DOUGLAS BRECKENRIDGE

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Indira Jai Singh, Sr Advocate with Mr Jai Bansal,
Ms Sonam Anand and Mr Pushpendra Singh

For the Respondent : Mr Prosenjeet Banerjee with Ms Liza M. Baruah

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V. EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been filed under section 19 of the Contempt of Courts Act, 1971 inasmuch as the appellant is aggrieved by the judgment dated 21.02.2012 delivered by a learned single Judge of this court whereby the appellant has been found guilty of committing contempt of court. In particular, the learned single Judge found the appellant guilty of disobeying

the orders dated 30.09.2010 and 05.04.2011 passed by the learned Guardianship court by allegedly removing the child Liam from the alleged custody of the respondent and by the appellant taking the said child into her own custody. The learned single Judge has also held that the appellant was guilty of contempt of court as she had abused the process of the court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice. He also found that the appellant had made a mockery of the judicial process.

2. In addition, the learned single Judge directed the appellant to purge the contempt by forthwith restoring the custody of the child Liam to the respondent. The learned single Judge, apart from the contempt proceedings, also passed an order holding that the orders passed by the Metropolitan Magistrate and the Additional Sessions Judge in the proceedings initiated by the appellant under the Protection of Women from Domestic Violence Act, 2005 (hereinafter called the 'D.V.Act'), insofar as they dealt with the aspect of custody in respect of Liam, to be null and void. Thereupon, the learned single Judge called upon the appellant to show cause as to why she should not be punished for contempt of court.

3. Apart from this, the learned single Judge also cautioned the Advocate who had represented the appellant in the lower court for minding his conduct in future and he was also advised to adhere to the highest standards of professionalism, ethics and integrity as an Advocate. Though, in the present appeal we are not concerned with the conduct of the said Advocate.

4. Finally, by virtue of the impugned judgment, the learned single Judge imposed costs of Rs. 2,00,000/- on the appellant, out of which, a sum of Rs. 1,00,000/- was to be paid by the appellant to the Delhi Legal Services Committee and the remaining Rs. 1,00,000/- was to be paid to the respondent within four weeks of the judgment.

5. It may be pointed out at this juncture itself that after the delivery of the said judgment dated 21.02.2012, the appellant handed over the physical custody of Liam to the respondent on 27.02.2012 and, therefore, purged the alleged contempt as directed by the learned single Judge. The appellant also paid a sum of Rs. 2,00,000/- as costs out of which a sum of Rs. 1,00,000/- was paid to the Delhi Legal Services Committee and the remaining sum of Rs. 1,00,000/- was paid to the respondent who happens to be her husband.

6. It should be noted that the appellant married the respondent on 18.01.1992. The respondent is an American citizen. Ever since the marriage, the appellant and the respondent have been residing in Delhi. They have four children, all of them sons. The youngest of them being Liam. At present, the age of Liam would be almost seven years. In other words, Liam would have been between four to five years old at the time when the orders which were allegedly disobeyed had been passed. All the four sons are admittedly U.S. citizens. It is also to be noted that after the delivery of the judgment dated 21.02.2012 and during the pendency of this appeal, the respondent left India with all the four sons without taking prior leave of this court or of the Guardianship court or the court where the D.V.Act proceedings were pending. Of course, an application has been filed in the present proceeding requesting that the appellant be restrained from entering or accessing C-87, Anand Niketan, New Delhi, the house where the children resided or any other residence where the children might be residing. Other prayers were also made in the said application. This application was filed after the respondent had already reached U.S. In fact, the affidavit in support of the application has been affirmed in USA. We are also informed by the learned counsel for the appellant, which fact is not

disputed by the learned counsel for the respondent, that the respondent has given up the rented accommodation at C-87, Anand Niketan shortly after the said application had been filed. In other words, the respondent has taken himself as well as his children out of the territorial jurisdiction of this court, even during the pendency of the present proceedings and the other proceedings pending before the Guardianship court and the court hearing the D.V. Act case.

7. Returning to the impugned order we find, from the very first paragraph thereof, that the petition was filed under Sections 10 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, with the allegation that the appellant had deliberately and wilfully disobeyed the orders dated 30.09.2010 and 05.04.2011 passed by the Guardianship court, Saket Courts, New Delhi, in Guardian Case No. 66/2010. It was also alleged that there was wilful disobedience of the orders of the Metropolitan Magistrate dated 13.10.2011 in CC No. 332/1 which was a case under the D.V. Act filed by the present appellant. It was also alleged before the learned single Judge that the order dated 19.10.11 passed by the learned Additional Sessions Judge in the appeal in respect of the said D.V. Act case has also been wilfully disobeyed. However, before

us, the learned counsel for the respondent has fairly stated that there was no disobedience on the part of the appellant insofar as the orders dated 13.10.2011 passed by the Metropolitan Magistrate and the order dated 19.10.2011 passed by the learned Additional Sessions Judge are concerned. Therefore, in the present appeal we are only concerned with the alleged wilful disobedience of the orders dated 30.09.2010 and 05.04.2011 as also the finding of the learned single Judge that the appellant was guilty of contempt of court as she had also abused the process of the court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice.

8. The learned senior counsel appearing on behalf of the appellant submitted that the impugned judgment cannot be sustained in law for several reasons. The first point urged by her was that there was no wilful disobedience of any order on the part of the appellant. She submitted that the orders dated 30.09.2010 and 05.04.2011 only referred to de facto custody and not custody by way of a judicial order. In fact, she suggested that both the parents had custody of the youngest child Liam. Insofar as the other three children are concerned there is no dispute that the physical custody of those children remained throughout with the respondent and the

appellant had never taken physical custody of the older three sons. The only dispute is with regard to the youngest son who was around four to five years old at that point of time.

9. Secondly, the learned senior counsel submitted that the impugned order cannot be sustained because it has returned findings of civil contempt as well as of criminal contempt and the two are entirely separate. In fact, the procedures for dealing with cases of civil contempt and of criminal contempt are delineated separately under the Contempt of Courts Act, 1971. Insofar as criminal contempt is concerned, she drew our attention to section 15 which deals with cognizance of criminal contempt. Section 15(2) deals with the case of criminal contempt of a subordinate court. The said provision stipulates that the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf. She submitted that in the present case neither was there any reference by a subordinate court nor was there any motion by the competent Law Officer. As such, this court ought not to have taken cognizance insofar as the elements of criminal contempt were concerned. Furthermore,

she pointed out that, in any event, the hearing of a case of criminal contempt, by virtue of section 18 of the Contempt of Courts Act, 1971, was to be by a Bench of not less than two judges and therefore the findings of the learned single Judge impinging upon the elements of criminal contempt was clearly without jurisdiction.

10. Thirdly, the learned senior counsel appearing on behalf of the appellant submitted that the appellant, irrespective of the allegations and the counter allegations made between the husband and the wife, had tendered an unconditional, unqualified apology in writing before the learned single Judge and that, in the circumstances of the case which essentially was an acrimonious matrimonial dispute between a husband and a wife relating to the custody of a minor son of only four to five years of age, the apology ought to have been accepted rather than aggravating the situation even further by holding the mother of the minor son guilty of contempt. Fourthly, she submitted that the learned single Judge while dealing with the issue of contempt ought to have restricted himself to the allegations of contempt before him and should not have impinged upon the powers of the courts hearing the case of the appellant under the D.V. Act. She submitted, in this context, that the learned single Judge ought not to

have nullified the orders passed by the Metropolitan Magistrate and the learned Additional Sessions Judge in proceedings under the D.V. Act. Fifthly and finally, the learned senior counsel appearing on behalf of the appellant submitted that, in any event, the appellant ought not to have been subjected to such heavy costs of Rs. 2,00,000/- when, even if a person is punished for contempt, the maximum fine which can be imposed is Rs. 2000/-.

11. The learned counsel appearing on behalf of the respondent was also heard at length. Although the matter of contempt is between the court and the alleged contemnor, the learned counsel for the respondent provided valuable assistance to this court. Of course, the learned counsel for the respondent made submissions in support of the impugned judgment. He submitted that the learned single Judge had not committed any error in holding that the appellant had wilfully disobeyed the orders dated 30.09.2010 and 05.04.2011. He submitted that the custody of Liam was with the respondent as would be clear from the order dated 30.09.2010. It is also clear that the appellant only got visitation rights by virtue of the consent order dated 05.04.11. Thus, according to the learned counsel for the respondent, in the proceedings before the Guardianship court, it was a

recognized fact that the custody of Liam was with the respondent. However, on 12.10.2011 the appellant moved the application under the D.V. Act before the Metropolitan Magistrate and on 13.10.2011, the appellant took Liam from school and produced him before the Metropolitan Magistrate in the said D.V. Act case stating that the child was in her custody. Furthermore, the learned counsel for the respondent also submitted that in paragraph 68 of the complaint by the appellant under the D.V. Act, the appellant had not clearly indicated the orders that were passed by the Guardianship court on 30.09.2010 and 05.04.2011. He submitted that this fact is also recorded in the order dated 13.10.2011 passed by the Metropolitan Magistrate in CC No. 332/1. The learned counsel for the respondent also submitted that the entire case has been dealt by the learned single Judge as one of civil contempt and does not involve any element of criminal contempt. He submitted that the focus of the learned single Judge was on the alleged wilful disobedience of the orders dated 30.09.2010 and 05.04.2011. The findings of the learned single Judge which may have impinged upon elements of criminal contempt, according to him, were only incidental and could be easily severed and have not actually been gone into by the learned single Judge. Therefore, according

to the learned counsel for the respondent, there has been no violation of procedure with regard to a proceeding under criminal contempt because the entire case has been dealt as one of civil contempt. Consequently, he submitted, that the impugned order was not without jurisdiction. The learned counsel for the respondent also submitted that the appellant was guilty of contumacious conduct inasmuch as she had not produced the orders dated 30.09.2010 and 05.04.2011 in the D.V. Act proceedings which resulted in the passing of the order dated 19.10.2011 by the learned Additional Sessions Judge stating that the custody of Liam with the appellant should not be disturbed except by due process of law till the next date of hearing. According to the learned counsel for the respondent, such an order, perhaps, would not have been passed had the appellant furnished copies of the orders dated 30.09.2010 and 05.04.2011. Moreover, despite the fact that on 13.10.2011 she had taken time to file the amended petition and also to file orders passed in the Guardianship court in the petition filed by the respondent, the orders were not filed.

12. The learned counsel for the respondent also submitted that the learned single Judge was well within his right to have nullified the orders passed by the Metropolitan Magistrate and the learned Additional Sessions

Judge in the D.V. Act proceedings and that the learned single Judge cannot also be faulted for passing an order with regard to costs, particularly, as the learned single Judge had, in paragraph 66 of the impugned judgment, returned a finding that the conduct of the appellant, seemingly added and supported by the conduct of her counsel, clearly amounted to fraud upon the court dealing with the D.V. Act proceedings as well as upon the respondent.

13. After having heard the counsel for the parties at length, we feel that it cannot be said with certainty that there was any wilful disobedience of the orders dated 30.09.2010 and 05.04.2011. We also feel that in view of the circumstances and the acrimonious battle between the husband and the wife insofar as the custody of the youngest son Liam was concerned, it would have been appropriate for the learned single Judge to have accepted the unconditional and unqualified apology of the appellant and to have put a quietus to the matter. It is not unusual that matrimonial disputes tend to get very bitter and ugly. They get all the more bitter and acrimonious when one party alleges that the other party is not mentally sound or insane. In the present case the respondent has made serious allegations that the appellant is suffering from some kind of mental disorder, to be precise, from “bi-

polar disorder”. Our attention was drawn to the reply filed by the appellant in the Guardianship petition filed on behalf of the respondent. In paragraph 4 of the parawise reply it has been stated by the appellant that due to the cruel acts of the respondent, the appellant was diagnosed with ‘bi-polar disorder’. It is further stated that the appellant had been treated with great cruelty and had been harassed by the respondent time and again and therefore she had developed some mental health problems. It was, however, submitted in the said paragraph that the appellant was then in a perfect frame of health and was in proper physical and mental state. A medical certificate was also filed along with the said reply. Whether the ‘bi-polar disorder’ was caused by the conduct of the respondent as alleged by the appellant or not, is something which cannot be gone into the present proceedings. However, it is clear that the appellant was, at some point of time, suffering from some mental health problem. In our view this ought to have been a mitigating factor in favour of the appellant rather than a factor to pin her down with contempt of court. We must not forget that the appellant was a mother from whom all her children had been taken away and she was only trying to keep the custody or re-gain the custody of the youngest child who was only four to five years old.

14. Returning to the facts of the case and particularly to the background of the orders dated 30.09.2010 and 05.04.2011, we find that an undertaking had been given by the appellant before the Guardianship court on 09.09.2010 which is to the following effect:-

“I undertake that, I shall not remove the child Liam from the territorial Jurisdiction of this Court without the permission of this Court.”

Insofar as the above undertaking is concerned, it is an admitted position, that the appellant has not violated that undertaking. She has not removed Liam from the territorial jurisdiction of the Guardianship court. It so happened that after she gave the undertaking, she left for U.K. and while doing so, she left Liam with her parents, who in turn left Liam with the respondent. In other words on 30.09.2010 when the matter came up before the Guardianship court, the respondent had physical custody of Liam. We may point out that earlier the physical custody of Liam was with the appellant and the respondent had moved an application under section 12 of the Guardian & Wards Act, 1890 for handing over interim custody of Liam to the respondent. On 30.09.2010 an order was passed by the Guardianship court in two stages. The said order reads as under:-

“30.9.2010

Present: Sh. Banerjee and Liza Baruah Advocate for petitioner with petitioner.

None for respondent.

In the morning one advocate appeared on behalf of respondent and filed reply to the petition of the petitioner along with extra copy for the petitioner. The copy of the petition has been supplied to petitioner.

It is informed by counsel for petitioner that respondent left Delhi and went to U.K. on 16.09.10 by leaving the child Liam at her father's home. It is further submitted that the parents of respondent dropped the child at the residence of petitioner and since, then the child in the custody of the petitioner. It is further submitted that since the child has already come in the custody of the petitioner, therefore, the application for interim relief may kindly be disposed of. Considered. The petitioner is present with the child in the court. Keeping in view the fact that child whose custody was sought by the petitioner has already come in his custody therefore the prayer made in an application U/s 12 of the Guardian and Wards Act stands satisfied, thus, the application U/s 12 is disposed of.

Petitioner seeks time for filing the rejoinder to the reply of the respondent. Heard. Allowed. Let the same be filed within three weeks from today with advance copy of opposite party. Be put up for rejoinder the petitioner, if any, otherwise admission denial of documents and framing of issued on 27.11.2010.

(Raj Kumar Tripathi)
JSCC/ASCIJ/Guardian Judge

30.09.2010”

On going through the above order it is apparent that in the morning an Advocate had appeared on behalf of the appellant and filed a reply to the petition of the respondent. A copy of the said reply had been handed over to the respondent. However, in the afternoon when the matter was taken up, nobody was present on behalf of the appellant herein. And the respondent's counsel informed the court that the appellant had gone to U.K. on 16.09.2010 by leaving the child at her father's home who, in turn, dropped the child at the residence of the respondent and since then the child was in the custody of the appellant. The court considered this information and observed that as the respondent was present with the child in court and since the custody was already with the respondent the prayer made in the interim application under section 12 of the Guardian & Wards Act, 1890, stood satisfied and therefore the application was disposed of.

15. The entire battle between the appellant and the respondent is with regard to the interpretation that is to be given to this order. According to the learned counsel for the appellant, this order was an ex parte order in the sense that it was passed in the absence of the counsel for the appellant herein and had been passed on the statements made by the respondent. Secondly, it was an order which merely recognized the factum of physical

custody of Liam being with the respondent on 30.09.2010. According to the learned senior counsel, there was no judicial pronouncement even at the interim stage whereby custody of Liam was granted to the respondent. Therefore, there was no question of any violation of this order in case the appellant took custody of Liam subsequently.

16. Insofar as the second order dated 05.04.2011 is concerned, we find that it is actually a consent order. Physical custody of Liam was with the respondent throughout this period up to 05.04.2011. The allegation of the appellant was that she was even blocked out from meeting Liam as well as her other three sons. After hearing the parties, the Guardianship court felt that the parties should explore the possibility of an amicable resolution of the dispute before the mediation centre. As an interim arrangement, certain modalities had been agreed to by the appellant and the respondent. This would be apparent from the order dated 05.04.2011 which is as under:-

“G-66/10

05.04.2011

Present: Petitioner present with his counsel.

Respondent present with her counsel.

Heard. File perused. Both the parties are ready and willing to settle their disputes amicably. On the joint request of both the parties, the matter is referred to Mediation Centre, Delhi High

Court, New Delhi. The parties are directed to appear either in person or with their counsel before Judge Incharge, Mediation Centre, Delhi High Court, New Delhi on 07.04.2011 at 04:00 PM. Ahlmad is directed to send due intimation to Mediation Centre well within time.

Heard. Till the parties explore the possibility for amicable resolution of dispute before the Mediation Centre, the following arrangement is made with respect to the visitation rights of the respondent with the minor children without prejudice to the rights and contentions of both the parties:

The petitioner has agreed that he will hand over the key of the house to respondent for having access to the house.

It has been agreed between the parties that the respondent will have free access to all the minor children so that she may have healthy relationship with the children and she may offer motherly affection to them.

The respondent is not permitted to take the minor children out of NCR.

The aforesaid arrangement shall continue till further orders.

Matter be put up for compromise between the parties, if any, otherwise for arguments on application under Order 7 Rule 11 CPC moved by the respondent and other pending applications of parties, if any, on 20.05.2011. copy of order be given dasti to both the parties.

(Raj Kumar Tripathi)
JSCC-cum-ASCJ-cum-Guardian Judge (South)
Saket Courts, New Delhi / 05.04.2011”

According to the learned senior counsel appearing on behalf of the appellant this order also did not confer any judicial custody even as an interim measure on the respondent. It merely recognized the factual

situation as it existed on that date and tried to provide a remedy of visitation to the appellant. It was, first of all, agreed between the parties that the respondent would hand over the keys of the house to the appellant so that she could have free access to the house (that is, the matrimonial home). Secondly, it was agreed between the parties that the appellant would have free access to all the minor children so that she may have a healthy relationship with them and she may also offer motherly affection to them. Lastly, it was agreed that the appellant would not take the minor children out of the National Capital Region of Delhi. The learned counsel for the appellant submitted that none of the three points which had been agreed upon by the parties have been violated by the appellant. She submitted that this order nowhere grants custody of the children to the respondent. On the other hand, Mr Bannerjee appearing on behalf of the respondent submitted that the mere fact that an arrangement with respect to visitation rights of the appellant was made as an interim measure implied that the court recognized that the custody of the children, including Liam, was with the respondent. Therefore, any alteration in that situation would amount to a contravention and disobedience of the order.

17. Having considered these orders at some length, we are of the opinion that the orders are not so clear cut as to indicate that the custody of the children had, in fact, as a judicial pronouncement, even by way of an interim measure, been granted to the respondent. Therefore, even if the appellant had taken the custody of Liam away from that of the respondent, it would not amount to a clear cut case of 'wilful' disobedience of an order of the court so as to make her guilty of contempt of court. It is perhaps possible that the appellant did not receive proper advice with regard to the interpretation of the said orders. We cannot, for certain, come to the conclusion that there was a wilful disobedience of a direct court order so as to enable the court to haul her up for contempt. This is one aspect of the matter which we feel that the learned single Judge did not examine at all.

18. We may also point out that in the D.V. Act proceedings the appellant had disclosed the pendency of the Guardianship petition which had been filed by the respondent. She also filed a copy of the undertaking given by her which was recorded on 09.09.2010 to the effect that she would not take Liam out of the jurisdiction of the Guardianship court. We may reiterate that there is no dispute that the appellant did not violate this undertaking. However, the complaint under section 12 of the D.V. Act was not very

clear with regard to the nature of the orders that were passed by the Guardianship court on 30.09.2010 and 05.04.2011. This is also apparent from the order dated 13.10.2011 passed by the Metropolitan Magistrate wherein he has observed that the language used in paragraph 68 of the complaint was ambiguous and did not clearly reflect the orders passed by the Guardianship court. It is also a fact that till 19.10.2011, the appellant's counsel had not filed copies of the said orders dated 30.09.2010 and 05.04.2011 before the learned Additional Sessions Judge in the appeal proceedings under the D.V. Act. Be that as it may, there is no allegation that the orders dated 13.10.2011 and 19.10.2011 passed under the D.V. Act proceedings have been, in any way, violated by the appellant. The result of the aforesaid discussion is that we do not agree with the conclusion of the learned single Judge that there was any 'wilful' disobedience of the orders dated 30.09.2010 and 05.04.2011. Therefore, in our view no case for civil contempt has been made out.

19. Coming to the other issue with regard to the findings impinging upon criminal contempt, we are in agreement with the submissions made by the learned counsel for the appellant that those findings, specifically the one recorded in paragraphs 67 and 73 of the impugned judgment are clearly in

the nature of findings which are necessary for establishing criminal contempt. This would be clear from examining the definition of criminal contempt as appearing in section 2(c) of the Contempt of Courts Act, 1971 which is to the following effect:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a) XXXXX XXXXX XXXXX XXXXX XXXXX

(b) XXXXX XXXXX XXXXX XXXXX XXXXX

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

XXXXX XXXXX XXXXX XXXXX XXXX”

It will be seen from the aforesaid definition that an act which scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court would amount to criminal contempt. In paragraph 67 of the impugned

judgment the learned single Judge has returned a specific finding that the appellant has made a mockery of the judicial process which undermined the dignity of the court and the majesty of law. He further found that the appellant by her conduct tended to bring the authority and administration of law into disrespect and disregard. He further held that the appellant seriously interfered with the rights of the respondent and abused the process of the court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice amounting to contempt of court. And thereafter the learned single Judge concluded that the respondent was clearly guilty of contempt of court. Similar findings are reiterated in paragraph 73 of the impugned judgment.

20. In the backdrop of these findings it is evident that they are entirely in the realm of criminal contempt as can be seen from the definition which has been extracted above. That being so, it is obvious that the learned single Judge returned a finding with regard to criminal contempt without following the procedure prescribed under the Contempt of Courts Act and particularly, section 15, which permits the High Court to take cognizance of criminal contempt of subordinate courts only on a reference made to it by the subordinate court or on a motion made by a competent Law Officer

insofar as a union territory is concerned. The contempt application was initiated neither by the subordinate court nor by the competent Law Officer. Therefore, cognizance of criminal contempt could not have been taken by the learned single Judge. Furthermore, even if it was assumed that the cognizance was rightly taken, the learned single Judge should have noticed that section 18 of the Contempt of Courts Act, 1971 makes it clear that every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges. In other words it was a matter which ought to have been referred to the Division Bench and ought not to have been determined by the learned single Judge. Therefore, insofar as the findings in the nature of criminal contempt which have been returned by the learned single Judge are concerned, they are wholly without jurisdiction. The learned counsel appearing for the respondent submitted that the learned single Judge had rendered a finding with regard to ‘interference with the due course of justice’ only because it was necessary for meting out a punishment under section 13 of the Contempt of Courts Act, 1971 and unless and until the learned single Judge returned such a finding, no punishment could have been contemplated in the present proceedings. Before we comment upon the submissions of the learned

counsel for the respondent it would be appropriate to set out section 13.

The same reads as under:-

“13. Contempts not punishable in certain cases.—
Notwithstanding anything contained in any law for the time being in force,—

- (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
- (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.”

A plain reading of the section indicates that no court can impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it “substantially” interferes, or tends “substantially” to interfere with the due course of justice. Furthermore, clause (b) of section 13 stipulates that the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*. It is obvious that section 13 operates at the time of returning a finding with regard to the contempt of court. It does not refer to a stage

subsequent to the returning of such findings. In the present case, in any event, the argument advanced by the learned counsel for the respondent does not at all arise because the learned single Judge has not returned a finding that the contempt was of such a nature that it “substantially” interfered or tended “substantially” to interfere with the due course of justice. On the contrary, the findings recorded by the learned single Judge, as observed above, clearly are in the nature of findings which are necessary before a verdict of guilt can be returned in respect of an allegation of criminal contempt.

21. Consequently, we are of the view that the impugned judgment is liable to be set aside.

22. Insofar as the element of costs is concerned, the learned senior counsel appearing on behalf of the appellant has stated that the sum of Rs. 1,00,000/- which has been paid to the Delhi Legal Services Committee, since it is for a good cause, need not be interfered with. However, we feel that the sum of Rs. 1,00,000/- which had been paid by the appellant to the respondent ought to be returned by the appellant to the respondent within four weeks from today. It is ordered accordingly.

23. The appeal is allowed. The impugned judgment is set aside. The appellant is discharged of the charge of contempt by virtue of order dated 09.11.2011 issued by the learned single Judge. All pending applications also stand disposed of.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

APRIL 11, 2013
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