

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.01.2014

+ **CONT. APP.(C) 1 /2013**

S.K. SRIVASTAVA

.....Appellant

versus

MS. X AND ANR.

.....Respondents

Advocates who appeared in this case:

For the Appellant : Mr Ram Jethmalani, Sr. Advocate with
Mr Ashish Dixit, Mr S.K. Gupta,
Mr Karan Kalia, P.R Mala

For the Respondents : Mr Jayant K. Mehta, Mr Sukant Vikram,
Mr Anuj Kapoor for Respondent 1 & 2.
Ms. Maneesha Dhir with Ms. Vanessa Singh
for CBDT.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present is appeal is filed by the appellant under Section 19 of the Contempt of Court Act, 1971 (hereinafter referred to as the "Act") and impugns the order dated 04.01.2013 passed by a learned Single Judge of this Court in Cont. Cas (C) No.330/2012. The said order dated 04.01.2013 is hereinafter referred to as the 'impugned order'. By the impugned order, the learned Single Judge has imposed a punishment of civil imprisonment for a period of fifteen (15) days alongwith a fine of ₹2000 on the appellant

for violating/disobeying the restraint order dated 29.09.2011 passed by the learned Single Judge in Contempt Petition no. 360/2011.

2. The appellant has been making scurrilous allegations and using derogatory language against the respondents, who are officers of the Indian Revenue Service. The learned Single Judge has for the purposes of avoiding unintended ignominy referred to the said respondents as Ms X and Ms Y. We also consider it apposite to refer to respondents nos. 1 and 2 as Ms X and Ms Y, respectively. The appellant had been restrained from circulating or addressing any communication similar to the letter dated 27.01.2011 addressed to the Chairman Central Board of Direct Taxes which contained scurrilous and vulgar allegations against Ms X and Y. However, it is apparent that the appellant has failed to refrain from making indecent and vulgar allegations against the respondents.

3. The appellant, who is an Indian Revenue Service (IRS) officer and presently working as Commissioner (Appeals), was suspended on 30.03.2007 on the ground of indiscipline for having made unscrupulous remarks against the officers of DGIT (Vigilance) and Chief Vigilance Officer. The said officers were dealing with a vigilance matter against the appellant wherein a chargesheet dated 03.04.2006 under Rule 14 of the CCS (CCA) Rules, 1965 had been issued to the appellant. On 26.09.2007, a second chargesheet was issued for administrative misconduct for casting aspersions on the character and conduct of lady officers. The appellant was suspended with effect from 08.11.2007 by an order dated 22.10.2009. Against the suspension order the appellant approached the learned Central Administrative Tribunal vide O.A No 3661/2009 to quash the suspension

order issued by the Director, AD-VI, CBDT. In the said petition the appellant had made vulgar and scandalous allegations against the respondents while accusing them of having caused a loss of ₹100 crores. The said petition was allowed by the Tribunal by an order dated 31.05.2010 and the suspension order was quashed.

4. Aggrieved by the order dated 31.05.2010 passed by the Tribunal the respondents preferred a writ petition bearing W.P.(C) No.6650/2010 before this Court. By an order dated 07.10.2010 a Division Bench of this Court expunged the disparaging pleadings *inter se* the appellant and the respondents.

5. The appellant on 27.01.2011 sent a letter to the Commissioner of Income Tax with copies to Chairman, CBDT of the Income Tax Department as well as to the CIT (Vigilance) in which, amongst other allegations, there were also some obnoxious and denigrating statements made against the respondents.

6. The respondents had filed a complaint against the appellant alleging sexual harassment by the appellant. As no action was taken on the said complaint filed with the Income Tax Department, the respondents preferred another writ petition being W.P.(C) No. 1373/2011. In the said writ petition, a learned Single Judge passed an order dated 01.03.2011 whereby the appellant was restrained from writing any letter containing allegations similar to those contained in the letter dated 27.01.2011 and further direction was also issued to the Department to ensure that no such communications are distributed within the organization.

7. The operation of the interim order dated 01.03.2011 was continued on 20.04.2011. The appellant, despite the interim order, sent an offending communication on 06.05.2011 to the Chairman, CBDT which also contained scurrilous statements against the respondents. The said action of the appellant led the respondents to file a contempt petition (being Cont.Case No.360/2011) before the learned Single judge.

8. Thereafter the appellant tendered an unqualified apology stating that the letter dated 06.05.2011 had been written in a state of emotional turmoil and submitted that he would neither in present nor in future write any letter or any other form of communication in terms of the order dated 01.03.2011. The Court recorded the statement and the unconditional apology of the appellant and disposed of the contempt petition (Cont.Cas 360/2011) by an order dated 29.09.2011.

9. However, on 02.04.2012 the appellant once again sent a letter containing language and allegations similar to the ones contained in the letter dated 27.01.2011. The letter dated 02.04.2012 was followed by letters dated 10.04.2012 and 16.04.2012 addressed to Sh. K.C. Jain, CIT which were also in a similar vein. Aggrieved by the same, the respondents filed another contempt petition being Cont.Cas 330/2012 bringing the said letters to the notice of the learned Single Judge. The learned Single Judge by an order dated 31.07.2012 injuncted the appellant from addressing any communication to any third person in which there was a reference of the respondents in the manner as contained in the letter dated 02.04.2012.

10. The appellant herein filed appeal against the order dated 31.07.2012, however, the same was withdrawn on 17.09.2012. In the course of hearing held on 18.10.2012 before the learned Single Judge, the learned counsel for the respondents placed on record another communication dated 01.08.2012 addressed by the appellant to Central Bureau of Investigation, ACB, Bhubneshwar, Orissa wherein similar unacceptable, offensive and obnoxious statements regarding the respondents had been made. This communication provided fresh cause to the respondents under the Contempt of Court Act, 1971 and notice was issued to the appellant.

11. Thereafter, communications dated 22.10.2012 and 20.12.2012 containing similar offending statements were sent to the Finance Minister and to the Commissioner of Delhi Police by the wife of the appellant.

12. In the meanwhile the appellant had also filed a writ petition bearing W.P.(C) No. 6802/12 wherein, inter alia, prayers had been made to transfer/remove the respondents from the office of the Union of India. It is important to note that in the said writ petition the appellant, once again, made averments that were denigrating the respondents. The said writ petition was withdrawn by the appellant, however, the learned Single Judge directed the Registry to tag the said writ petition along with the contempt petition bearing no. Cont.Cas.(C) 330/2012.

13. The learned Single Judge found the appellant guilty of wilfully and consciously violating Court orders dated 01.03.2011, 29.09.2011 and 31.07.2012 passed in W.P. (C) 1373/2011, Cont. Cas. 360/2011 and Cont. Cas 330/2012, respectively and passed the impugned order.

14. The appellant filed the present appeal challenging the impugned order. On 16.01.2013, when the present appeal was taken up for hearing by a Division Bench of this court, the learned counsel for the appellant stated that the appellant was going through some psychological trauma and suggested that the appellant be examined by a psychologist who would submit a report to this Court. It was further submitted that the appellant was willing to get himself admitted to the Vidyasagar Institute for Mental Health, Neuro and Allied Sciences (hereinafter referred to as VIMHANS). Accordingly, the Division Bench passed an order directing the Director of VIMHANS to send a report regarding the appellant, after his medical check-up, in a sealed cover to the Court for its perusal.

15. The appellant contented that he had visited the VIMHANS on 18.01.2013, 21.01.2013 and 28.01.2013, however, since there was no bed available at that time, he was asked to visit the hospital on 05.02.2013 and to get himself admitted on the same day itself, which he declined as he was to attend the Court on 06.02.2013. The appellant was admitted in VIMHANS on 16.02.2013.

16. The report in respect of the appellant was received in a sealed cover from VIMHANS and was perused by a Division Bench of this Court on 01.03.2013. As there were serious issues arising from the report the Court issued interim directions that (i) no communication addressed by the appellant qua any issue should be given any cognizance or be taken into consideration. (ii) the appellant should not be entrusted with any work in the Department as it may affect the public at large. After perusal of the

report it was put back in a sealed cover and the report was kept in the custody of the concerned Deputy Registrar.

17. Against the order dated 01.03.2013 the appellant filed Special Leave Petition (Civil) Nos. 10521-10522/2013 which was taken up by the Supreme Court on 13.03.2013 and was disposed of with a direction that the report regarding the appellant received from VIMHANS be made available to the counsel for the appellant before 18.03.2013 for perusal and for making submissions.

18. The Department had also submitted that the performance of the appellant on duty had not been satisfactory and had informed the Court that vide office order No.45 of 2013 dated 06.03.2013 the appellant had been put on compulsory wait.

19. During the course of arguments, the learned counsel for the appellant informed this court that the appellant had initiated proceedings against the doctors of VIMHANS who had submitted the report, before the Medical Council and in those proceedings the said doctors had retracted their findings as submitted in their report to this Court.

20. We have heard the learned counsel for the parties.

21. Mr Jethmalani, the learned senior counsel appearing for the appellant has raised several contentions. First of all, he has submitted that the learned Single Judge erred in proceeding on the basis that the appellant was guilty of violating the order dated 01.03.2011 as that was an interim order passed in W.P.(C) 1373/2011 which was disposed of on 21.07.2011. It is

contended that the order dated 01.03.2011 being an interim order ceased to exist on the disposal of the writ petition on 21.07.2001 and thus, there was no question of the appellant being found guilty of violating an order that was inoperative. The learned counsel also pointed out that the letter which was held to be contumacious was a letter dated 06.05.2011 which was subject matter of Cont. Cas No. 360/2011. The said contempt petition against the appellant, was also disposed of by an order dated 29.09.2011, wherein it was observed that the “contempt stands purged”. It is further urged that the learned Single Judge erred in proceeding on the basis that there was any violation of the order dated 29.09.2011, since the operative part of that order was only to discharge the show cause notice issued to the appellant and no further direction could be read in the said order. The learned senior counsel relied upon the decision of the Supreme Court in **Kanwar Singh v. DHC: (2012) 4 SCC 307** in support of the contention that an interim order merges in the final order after it is passed. The learned senior counsel contended that the impugned order proceeds on the basis that the appellant is guilty of repeatedly disobeying the orders and wilfully defying the orders of the Court. It is contended that the conclusion is wholly erroneous in view of the fact that the order dated 01.03.2011 passed in W.P.(C) 1373/2011 was no longer operative as the writ petition had been disposed of and further any allegation of contempt on account of the letter dated 06.05.2011 sent by the appellant also did not survive in view of the fact that a learned Single Judge of this Court had already recorded in the order dated 29.09.2011 that the contempt stands purged and had discharged the show cause notice issued to the appellant in respect of the said letter dated 06.05.2011. It is further contended that since the order dated

29.09.2011 contained no further directions, no proceedings for contempt of the said order could possibly lie.

22. The above contention advanced on behalf of the appellant is completely devoid of any merit. The appellant had sent a letter dated 21.07.2011 to the Commissioner of Income Tax and copies of the same were sent to the Chairman, CBDT as well as to CIT (Vigilance). Indisputably, the said letter contained vulgar and scandalous allegations against the respondents.

23. A learned Single Judge of this Court passed an order dated 01.03.2011 restraining the appellant from issuing any communication similar to the abovementioned letter dated 27.01.2011. In order to understand the import of the directions contained in the said order dated 01.03.2011, it is necessary to refer to the aforementioned letter dated 27.01.2011, the relevant extract of which is quoted below:-

“5. It is brought on record that to wreak havoc upon me and to intimidate others into silence lest the illicit sexual intimacies between Sri B.K. Jha and Ms Y and Sri S.S. Rana and Ms X in organized prostitution wherein Sri B.K. Jha and Ms Y is practicing the illegal trade of prostitution is objected to and punished as per law, Sri B.K. Jha and his accomplices have fraudulently and incorrectly fabricated fake, forged, false and counterfeit records to allege that criminal cases are pending against me and hence promotion should be denied to me. To cover up such fraud and forgeries, Directorate of Income Tax (HRD) and Sri B.K. Jha, DIT (HRD) and Sri S.S. Rana DGIT(HRD) are willfully not handing over these records and are tampering with and manipulating those records. ...

....5. It is matter of record that having failed in their illegal activities to harass me, Sri P.K. Misra and his accomplices that includes Ms X (IRS XXXXX) and Ms Y (IRS YYYYYY) and who have admitted to have illicit extra-marital sexual intimacies amongst them travelling together and staying in five Star Hotels and Guest Houses as man and wife, through Sri Shankar Das (IPA 1994 AGMUT, originally from DANIPS) filed two FIRs against me alleging that through my official reports submitted to my superiors in course of official work, I have enraged the modesty of those two women, ie., Ms X and Ms Y vide FIR no. 153 of 2009, P.S. Barakhamba Road, on 30.9.2009 and FIR No. 514 of 2009 P.S. R.K. Puram on 28.10.2009. Both the FIRs were malafidely filed with express intention of stalling the promotion of undersigned and is being used precisely for the same.

6. Both these women, i.e., Ms X and Ms Y apart from being in extra-marital sexual intimacies with Sri P.K. Misra and a large number of other male colleagues are also involved in organized prostitution and are prostitutes in terms of clause (f) of Section 2 of the Immoral Traffic Prevention Act, 1956. Besides, they nurse animus against me for having inspected their work while working as Addl. DIT(IT) and detected and reported theft and embezzlement of public money and public revenue in excess of Rs 10,000 crores like case of M/s NDTV Ltd. where Ms X embezzled Rs. 1,46,82,836/- by passing an illegal order u/s 143(1)(a) in A.Y. 2004-05 after initiation of proceedings u/s 143(2) on 28.3.2005 and issuing illegal refund from public exchequer and in lieu thereof accepting bribe and illegal gratification like all expenses paid free pleasure trip to Europe for self and family involving an estimated expenditure of about Rs. 1,00,00,000/- in April, 2005 whereof she left the country on 12.04.2005 by British Airways Flight No. 142 and returned back by British Airways flight no. 143 on 20.04.2005. Ms X has

actively connived and conspired with M/s NDTV Ltd. in laundering the black money of M/s NDTV Ltd. worth more than Rs. 2000 crores through M/s NDTV Plc., UK and M/s NDTV BV, Netherlands and five of its subsidiaries. Likewise, Ms Y because of her illicit sexual intimacies with some rogue touts operating in Income Tax Department has caused theft of more than Rs. 100 crores by passing illegal orders u/s 154 making substantive additions u/s 154 on serious Audit objections to get those additions knocked down in appeal.....

.....3. Ms Y, JDIT (HRD), garishly painted and gaudily attired befitting a prostitute of her caliber, is visiting various places including premises of Ld. CAT, Principle (sic Principal) Bench, Delhi acting in most suggestive and provocative manner offering immoral gratification if person upon whom she is working agreed to conspire with her against me. Log record of operational vehicle assigned to Ms Y would reveal her nocturnal trips to various places and people to canvass support against me through illicit and extra-marital sexual favours....”

(emphasis supplied)

(The names of the respondents have been changed as X and Y for the reasons as stated hereinbefore)

24. A reading of the said letter dated indicates that the allegations made against the respondents were denigrating and vulgar and undoubtedly with the object of humiliating the respondents. The import of the order dated 01.03.2011 was to clearly restrain the appellant from making vulgar and scurrilous allegations against the respondents so as to protect the dignity of the said officers from being sullied by any wanton allegation such as those

contained in the letter dated 27.01.2011. The said order was violated by the appellant by addressing a communication dated 06.05.2011. The contention that this letter was not contumacious as the order dated 01.03.2011 was an interim order and ceased to be operative on disposal of the W.P.(C) 1373/2011 is misconceived as the said writ was disposed of on 21.07.2011 and as on 06.05.2011, the order dated 01.03.2011 was undisputedly in force. It is relevant to refer to the communication dated 06.05.2011, the relevant extract of which is quoted below:-

“.....by Ms. Y alleging that undersigned has through his official reports to superior authorities enraged the modesty of Ms. X and Ms. Y. Separately and in patently illegal Trade Union activities, Ms. X and Ms. Y have been alleging sexual harassment, molestation, sexual assault and repeated rapes against undersigned displaying tomato ketchup smeared undergarments as evidence of bestiality of undersigned, seeking his removal from the Govt. Service under Article 311(2) of the Constitution read with Rule 19 (2) of CCS (CCA), Rules, 1965 without holding an inquiry and has been canvassing for the same before various authorities like CVC, CBDT, Hon’ble Finance Minister, Hon’ble Minister of Law & Justice, etc.

XXXX XXXX XXXX XXXX XXXX

7. Ms. Y and Ms. X are involved in offences under IPC, 1860, P.C. Act, 1988, Immoral Traffic (Prevention) Act, 1956, Cr.P.C., 1973, The Indian Aircraft Act, 1934 read with the The Indian Aircraft Rules, 1937 and other assorted crime And offences including theft of Public money & Public revenue exceeding Rs. 10,000/- Crores.

8. Ms. Y has been accompanying certain male colleagues/clients to places both within and outside the country under fictitious names and identities claiming her to be wife of those colleagues/clients.

9. Undersigned, in course of his official duties as Addl. DIT (Inspection), being In-charge of Inspection Division of CBDT and Pre-emptive Vigilance set up of Income Tax Deptt., detected and reported illegal and unlawful activities of Ms. X and Ms. Y which has stood the test of judicial scrutiny right upto Hon'ble Supreme Court { M/s Green World Corporation Vs. CIT, (2009) 7 SCC 69} and has been accepted and implemented by the Govt. and is being defended before Hon'ble Delhi High Court (M/s NDTV Ltd., ITA No.-1404 of 2009). Ms. X has accepted bribe and illegal gratification from M/s NDTV Ltd. while Ms. Y has been travelling to Dubai, Mauritius and USA to collect bribe etc. Which are matter admitted record before Govt. as well as various Courts. Involvement of Ms. Y and Ms. X in activities prohibited under Immoral Traffic (Prevention) Act, 1956 has been widely reported in print and electronic media that has not been rebutted or refuted by anyone neither the Govt. nor Ms. Y and Ms. X. Undersigned may specially refer to News broadcast by Hindi News Channel IBN 7 on 4.6.2009 that remained uncontested.”

(The names of the respondents have been changed as X and Y for the reasons as stated hereinbefore)

25. The above extract from the communication dated 06.05.2011 indicates that the appellant had made allegations and used disparaging language that were interdicted by the order dated 01.03.2011. This communication constituted wilful defiance of the order dated 01.03.2011 and the respondents were constrained to file a contempt case being Cont. Cas(C) 360/2011. The issue whether the said letter was contumacious or not is no longer in dispute as the appellant accepted the same and tendered an unqualified and unconditional apology which was recorded in the order dated 29.09.2011 passed in Cont.Cas (C) 360/2011. The statement recorded by the appellant in the said case is as under:-

“Statement of Mr. S.K. Srivastava, IRS Civil List No.87052, CRD II/9, Pandara Park, New Delhi on SA.

I admit that I had written the communication dated 06.05.2011 to the Chairman, Central Board of Direct Taxes but this was under a mistaken belief that it was not violative of any order of any Court. I tender an unqualified and unconditional apology to this Court which may please be accepted and I have no intention either in the present or in the future to write any letter or any other form of communication in terms of the directions of this Court dated 01.03.2011 with reference to the allegations as contained in Annexure P-13 which finds mention in the order of this Court dated 01.03.2011.”

(emphasis supplied)

26. The above statement clearly indicates that the appellant represented before the learned Single Judge that he had no intention either in the present or in the future to write any letter or any other form of communication which were in the same vein and contained similar language and allegations as those contained in the letter dated 27.01.2011. In view of the statement made by the appellant, we are unable to accept the contention that the subsequent communications containing scurrilous and vulgar allegations similar to those as contained in the letter dated 27.01.2011 are not contumacious. However, any little doubt that one may have would also not survive in view of the order that was passed by the learned Single Judge while accepting the apology tendered by the appellant on 29.09.2011. The order passed by the learned Single Judge in Cont. Cas(C) No.360/2011 is quoted below:-

“Cont. Cas(C) No.360/2011

The additional reply filed by the respondent no.1 has been perused. He has tendered an unqualified apology; contention is that the letter dated 06.05.2011 had been written in a state of emotional turmoil. He has tendered his unqualified and unconditional apology to the court. The remorse of the respondent appears to be evident; his statement on oath has also been recorded separately. The respondent also agrees to withdraw all the allegations which have been made by him against the appellant as also the respondents no.2 and 3 in the first affidavit as also in the additional affidavit. Permission is granted. In view of the afore noted apology tendered by the appellant that he shall neither in the present nor in the future write any letter or other form of communication in terms of the order of this Court dated 01.3.2011 (with reference to the allegations as contained in Annexure P13), the apology is been accepted. Contempt stands purged. Show cause notice is discharged.

Petition is disposed of. ”

(emphasis supplied)

27. A bare reading of the aforesaid order indicates that the learned Single Judge discharged the show cause notice on the statement made by the appellant that he would not in the future write any letter or other form of communication as was interdicted by the learned Single Judge on 01.03.2011. It is apparent that the statement that the appellant would not write any letter or any other form of communication in future containing allegations similar to those contained in the letter dated 27.01.2011 would survive the disposal of the writ petition. This statement made by the appellant which was accepted by this Court, was not limited to the duration of the writ petition, as at the material time the Writ Petition No. 1373/2011 already stood disposed of.

28. After being discharged of the contempt proceedings the appellant addressed yet another letter on 02.04.2012 which again contained scurrilous allegations similar to those made by the appellant earlier. The language and the allegations in the letter dated 02.04.2012 were as obnoxious, if not more, as in the earlier letters. This letter was further followed by a letter dated 10.04.2012 addressed to Sh K.C. Jain, CIT which again contained vulgar and offensive allegations. These letters were apparently contumacious and accordingly, the respondent preferred the second Contempt petition- Cont. Cas (C) 330/2012, *inter alia* praying for initiation of proceedings for contempt of the order dated 29.09.2011 passed in Cont. Cas (C) 360/2011. Extracts of the letters dated 02.04.2012 are reproduced below:-

“...4. Likewise, Ms X in lieu of illicit extramarital sex which she had with Sri P.K. Mishra and his customers in Bangalore in Suite No. 10 of Income Tax Guest House, Infantry Road, Bangalore during 16th November, 2005 to 10th November, 2005 got the vigilance cases against herein the matter of her having received bribe from M/s NDTV Ltd. hushed up....

...6. In 2009 Ms X by providing illicit extra-marital sex to Sri SSN Murthy got her posted in Delhi after her promotions as JCIT when CBDT has asserted before Hon’ble Delhi High court that transfer out of station on promotion is rule in CBDT, however because of illicit extra-marital sex which Ms X had with Sri SN Murthy, she was retained in Delhi even after her promotion to the rank of JCIT.

7. By offering her body to ingratiate the debauched male lust and freely having illicit extra-marital sex with her benefactors

being a full blown serving prostitute involved in the prostitution racket of Sri P.K. Mishra alongwith Ms R. (exact particulars are obliterated) and Ms Y; Ms X, JCIT Range-21 has been subverting the rule of law and due process of law with impunity and has so far got away with the consequences of her illegal acts because of liberally provided illicit extra-marital sex on demand to her male benefactors....”

(emphasis supplied)

29. The letter dated 10.04.2012 sent by the appellant to Sh K.C. Jain, CIT also contained similar allegations as is evident from the portions of the letter dated 10.04.2012 which are reproduced hereunder:-

“....8.1 Ms X alongwith Ms Y and others has stolen the “Secret & Confidential” Govt. records and documents from the offices of ACIT, circle 40 (1) and other senior officers of the I.T. Deptt. and placed those records in public domain to enable Sri P.K. Mishra, her pimp and business partner in prostitution racket of I.T. Deptt taking advantage of which, Sri P.K. Mishra has filed series of writ petitions against I.T. Deptt. (CWP No. 6011 of 2011, CWP no. 7977 of 2011 etc.) to stall inquiry into verifiable instances of tax evasion, receipt of bribe and illegal gratification and serial prostitution, etc. over concealment of income of Rs 20,00,00,000/- in A.Y. 2004-05 and Rs. 10,00,00,000/- for A.Y. 2005-06. Copy of affidavit filed by Ms X before Hon'ble Delhi High Court in CWP no. 1373/2011 is enclosed for necessary perusal. In addition, records of CCIT, Delhi XIII are relied upon wherein an inquiry has been ordered as to how Ms X got to get “Secret & Confidential” Govt. Records....

...8.4 Ms X during year 2011-12 by providing illicit extra-marital sex to Sri V.K. Sahgal, CIT, Delhi XVI got reference of ‘Y’ category TEP to DIT (inv.) in her case and that of her spouse to DIT (inv.) stalled as she was not sure of being able

to stop investigation against her by providing sex on demand to officers of investigation wing of deptt.

8.5 Ms X, during year 2011-12 by providing illicit extra-marital sex has stolen the returns of Income and forms No. 16 in the case of Sri Abhisar Sharma, her spouse to cover up her having received bribe and illegal gratification from M/s NDTV Ltd. for facilitating theft of lawful taxes in excess of Rs. 1,200,00,00,000/- by M/s NDTV Ltd. The CIT, Delhi XVI has officially informed that those Returns are missing.

8.6 Ms X during year 2011-12 has conspired and connived with her pimps to cover up having received bribe and illegal gratification from M/s NDTV Ltd. by fraudulently claiming that not having done scrutiny assessment of M/s NDTV Ltd. she cannot be said to have official dealings with that company even though being A.O. of that assessee and having passed order u/s 143(1) and issued Refunds.....

....8.9 Ms X during year 2011-12 continued to be involved in "SEX & PROSTITUTION" racket of Sri P.K. Mishra, providing sex on demand and for consideration, to clients and customers procured by Sri P.K. Mishra, Sri S.S. Rana, Sri B.K. Jha, Sri Timmy Khanna, etc.....

....12. By offering her body to ingratiate the debauched male lust and freely having illicit extra-marital sex with her benefactors being a full blown serving serial prostitute involved in prostitution racket of Sri P.K. Misra with Ms.R. and Ms Y, Ms X, JCIT Ragne-21 has been subverting the rule of law and due process of law with impunity and has so far got away with consequences of her illegal acts because of liberally provided illicit extra-marital sex on demand to her male benefactors....

....14. having entered into illicit extra-marital sexual relations with Sri P.K. Mishra, Sri R. Prasad, Sri R.R. Singh, Sri Prakash Chandra, Sri A.K. handa, Sri N.C. Johsi and providing illicit extra-marital sex on demand to those officers to escape vigilance inquiries in the matter having received

bribe and illegal gratification from M/s NDTV Ltd. and facilitated theft of public revenue and embezzlement of govt. money by M/s NDTV Ltd. (specific instance being admitted and self-declared sex Mrs X had with Sri P.K. Mishra and his customers apart from providing group sex, unnatural sex, oral sex and sexual orgies in Suite No. 10 of Income Tax Guest House on Infantry Road, Bangalore during November 16th 2005 to November 21st 2005 and wherefrom about 20 used and several packets of unused male contraceptives and strips of female birth control pills were found and removed), Ms X alongwith Ms Y joined the prostitution racket of Sri P.K. Mishra as serial prostitute, serving clients and customers of Sri P.K. Mishra and pimps like Sri B.K. Jha, Sri S.S. Rana, Sri Timmy Khanna etc.

15. Thus, being serial prostitutes providing sex on demand to clients and customers for consideration, Ms X and Ms Y were hired by M/s NDTV Ltd. through pimp Sri P.K. Mishra to fake sexual harassment, molestation, sexual assault and rape by me both at their residences in NOIDA and offices in Delhi with the intent to stall the inquiries and the investigations into illegal and unlawful activities of M/s NDTV Ltd. being evasion of tax of about Rs1,200,00,00,000/-, laundering of illegal black money through the illegal hawala and fictitious jamakharch entries being bribe received by the public servants in 2 G Scam and embezzlement of govt. money of Rs. 1,46,82,836/- by getting the petitioner placed under suspension and for that agenda, Ms X and Ms Y, serial prostitutes providing sex on demand, escorted their pimps and customers on 2.6.2006 to CVC and on 6.6.2006 to CBDT and faked sexual harassment, sexual assault, molestation and rape by me based upon which, Sri P.K. Mishra proposed on 14.6.2006 to dismiss me under Article 311(2) of Constitution read with rule 19(2) of CCS (CCA) Rules, 1965 without inquiry and pending that to place me under suspension.....

.....17. In January, 2007, when Ms Indira Bhargava, Chairman, CBDT did not agree to proposals of Sri P.K. Mishra to place me under suspension on the charges of alleged sexual

harassment, sexual assault, molestation and rape of Ms X and Y, Ms X for had illicit sex with Sri R. Prasad and Sri R.R. Singh, Members of the CBDT and then along with Ms R (exact particulars are obliterated) and Ms Y, other prostitutes from prostitution racket of Sri P.K. Mishra went around alleging sexual harassment, sexual assault and rape by me and forced them on Ms Indira Bhargava, Chairman, CBDT, where Ms R. (exact particulars are obliterated) Ms X and Ms Y, serial prostitutes selling their bodies to debauched clients for sex on demand, enacted their sob drama and displayed their undergarments by smearing tomato ketchup and blow-drying that as proof of my bestiality and because of such drama by those serial prostitutes from the ranks of IRS, I was placed under suspension and inquires into illegal and unlawful activities of M/s NDTV Ltd. came to an end.....”

30. We are in no doubt that the conduct of the appellant in sending the abovementioned letters amounts to wilful defiance of the order dated 29.09.2011 passed by the learned Single Judge in Cont. Cas. 360/2011. The appellant after tendering an apology and after recording his statement that he had no intention of repeating the allegations as contained in the letter dated 27.01.2011 and 06.05.2011 wilfully and in defiance of the orders of this Court proceeded to send the above referred letters. We concur with the view of the learned Single Judge that the contumacious conduct of the appellant cannot be countenanced. This was a second instance of the contumacious conduct, the first being the letter dated 06.05.2011.

31. We are unable to accept the contention that the order dated 29.09.2011 did not restrain the appellant from addressing communications containing obnoxious and opprobrious allegations against the respondents. The entire basis of the order discharging the show cause notice against the

appellant was the unconditional apology tendered by the appellant and his statement that he had no intention to send any similar contumacious communications in future. The contention that the appellant was not bound by his statement on the basis of which he had obtained a discharge from the contempt proceedings cannot be accepted.

32. As the further course of events indicate, the contumacious conduct of the appellant did not cease even after the respondents filed the second contempt petition (Cont. Cas(C) 330/2012). On 31.07.2012, the learned Single Judge passed the following order in Cont.Cas(C) 330/2012:-

“The respondent is present in court. I may only note that this is the second instance of violation of orders of this court. The earlier contempt petition being no. 360/2011 was disposed of vide order dated 29.09.2011 wherein the respondents had tendered an unconditional apology to this court and had submitted before this court that he shall neither in present nor in future write any letter or any other form of communication in terms of order of this court dated 01.03.2011. The petitioner has brought to my notice a communication dated 02.04.2012 which emanated, admittedly, from the respondent to one Sh. K.C. Jain, CIT. There are explicit references to the petitioners in question in paragraph 3 to 8 of letter dated 2.4.2012. To say the least the language used is scurrilous. Prima facie a case for contempt is made out. In view of the fact that the respondent, on advice, seeks to defend his actions, opportunity is granted to him to file a reply. Accordingly, a reply, if any, be filed within two weeks. Rejoinder be filed before the next date.

I am informed by Mr Jayant Mehta, learned counsel for the petitioners, that vide order dated 21.07.2011 passed in WP(C) No. 1373/2011 directions were issued to the Income Tax Department to conduct an inquiry against the respondent, i.e., Sh. S.K. Srivastava within ninety days. Learned counsel for

the petitioner informs me that no steps whatsoever have been taken, in pursuance of the directions, save and except constitution of the inquiry committee.

Let notice issue to Member Personnel, CBDT. He shall file a reply to inform the court as to why no steps have been taken in pursuance of order dated 21.07.2011, to complete the inquiry. Let the said reply be filed within ten days from today.

In any event, it is made clear once again that the respondent shall not continue with his contemptuous conduct. The respondent hereon is enjoined from addressing communication to any third person in which there is a reference of the like nature to petitioners as in the letter dated 02.04.2012.

The respondent shall remain present in court on the next date of hearing.”

33. This order also was defied by the appellant who addressed another communication dated 01.08.2012 to the Central Bureau of Investigation, ACB, Bhubaneswar, Orissa. The relevant extract of the said letter is quoted below:-

“...ix) Sri P.K. Mishra, in lieu of bribe and sexual favours provided by Ms Y (as admitted by her that she escorted Sri P.K. Mishra to various places for providing illicit sexual favours to him under incorrect names and introduced her as Ms Y or Ms Y Nele, being the fifth wife of Sri P.K. Mishra), hushed up illegal losses caused by Ms Y to placate Sri Timmy Khanna, her alleged husband and her pimp in her prostitution in excess of Rs.1,00,00,00,000/- which she deliberately caused to enable Sri Timmy Khanna to procure bribe, etc. Petitioner refers to specific cases where in lieu of huge bribe and illegal gratification obtained by Sri Timmy Khanna, Ms Y caused illegal losses to public exchequer and got the matter hushed up by providing illegal sexual favours to Sri P.K. Mishra and

others and by joining the prostitution racket of Sri P.K. Mishra as a prostitute, as under-

Ms Prayag Hospital & Research Centre Pvt. Ltd., A.Y. 2000-01, revenue effect Rs. 1,32,72,500/-.

M/s United Hotels Ltd., A.Y. 2000-01, revenue effect-Rs. 68,33,947/-.....”

34. A copy of the communication dated 01.08.2012 was placed on record by the learned counsel for the respondent before the learned Single Judge and it was contended that the said communication also indicates that the appellant had compounded his contumacious conduct by wilfully defying the order dated 31.07.2012. This letter was taken on record and the learned Single Judge issued a show cause notice to the respondent as to why proceedings under the Contempt of Court Act, 1971 be not initiated against the appellant. In response to the show cause notice, the appellant tendered an affidavit dated 29.11.2012. The appellant accepted that the communications addressed by him were in violation of the orders passed by the Court and expressed his regret with respect to the same. With respect to the communication that was issued by the appellant after 31.07.2012, the appellant explained that he had no intention to defy the order of this Court but had taken recourse to cut and paste method and in the process the offending paragraphs had been inadvertently included in the communication addressed to Central Bureau of Investigation. Paragraph 3 and 8 of the affidavit tendered by the appellant are relevant and are quoted below:-

“ 3. That, the deponent craves the leave of this Hon'ble Court to explain the grave and constricting circumstances

which is being mentioned herein below purely with a view to pray for a lenient view in so much as deponent acknowledges that somewhere down the line while seeking the redressal of his grievances, he appears to have crossed the limits of decent and civil language thereby resulting in the unintentional violation of earlier orders dated 1.3.2011 of this Hon'ble Court passed in CWP No.1373/2011. Deponent expresses his the deepest regret for the unintended and unintentional lapse and seeks the mercy of this Hon'ble Court to take a lenient view.

XXXX XXXX XXXX XXXX XXXX

8. That, in so far as communication addressed to CBI is concerned, in compliance of the oral observations of Hon'ble Orissa High Court the said complaint was filed with the CBI in Bhubaneswar and as the same was done in a hurry, the deponent typing the complaint himself, that too while in transit, took recourse to cut and paste method and the paragraphs from elsewhere were pasted in the present communication as well without any intention to defy the orders of this Hon'ble Court and with the bonafide intention of assisting the investigating agency (the CBI) which was looking into the possibility of receipt of illegal gratification on account of the huge evasion of tax and laundering of illegal black money. The lapse on the part of deponent was unintentional and inadvertent and the deponent prays that this Hon'ble Court may graciously be pleased to take a lenient view in the matter.”

35. It is also relevant to note that on 22.11.2012, the appellant moved another writ petition being W.P.(C) No. 6802/2012 before the learned Single Judge, wherein once again the appellant made vulgar and scurrilous allegations against the respondents. Although this writ petition was withdrawn, nonetheless, it clearly indicates that the appellant had little remorse and the apologies tendered by the appellant were certainly not bonafide. At this stage, it is also relevant to note that the respondent placed

on record another letter dated 20.10.2012 addressed by the wife of the appellant to the Finance Minister, Government of India, wherein offending statements similar to those made in the other offending communications had been made.

36. The facts as stated above leave no doubt that the appellant is guilty of wilfully defying orders of this court and is guilty of contempt of court.

37. Secondly, it has been contented on behalf of the appellant that the order dated 31.07.2012 which is alleged to have been violated by the appellant by addressing the communication dated 01.08.2012, was not served on the appellant and therefore, the appellant could not be held guilty of violating the said order. This contention is also without merit as the appellant was present in court on 31.07.2012 when the order restraining the appellant from issuing any further offending communications was pronounced. We may also add that this contention is clearly an afterthought, since the appellant's explanations before the learned Single Judge was not that he had not been served with the order dated 31.07.2012 or that he was not aware of the same but that the communication issued on 01.08.2012 had erroneously included offending passages on account of the cut and paste process that had been adopted by the appellant in framing the said communication.

38. Thirdly, it is contended that the communication dated 01.08.2012 cannot constitute contempt of the order passed by the Court since that was a formal complaint to Central Bureau of Investigation and not a communication as prohibited by the orders dated 01.03.2011, 29.09.2011 or

31.07.2012. This contention is also wholly without merit. The orders passed by the Court unequivocally directed the appellant to refrain from the vulgar and obnoxious allegations that were being wantonly made by the appellant to humiliate and harass the respondents. The appellant also clearly understood the directions issued by the Court. His explanation for including the offending passages contained in the communication dated 01.08.2012, is that he had erroneously included the said passages in the complaint and not that the communication addressed to Central Bureau of Investigation was not the kind of communication that had been interdicted by the orders of the Court. The order dated 31.07.2012 enjoined the respondent from addressing communication to any third person in which there is a reference of the like nature to the respondents as in the letter dated 02.04.2012. The language of the said order is unambiguous and it was not open for the appellant to make any reference to respondents as had been made by the appellant in the letter dated 02.04.2012. Indisputably, the complaint made by the appellant to the CBI referred to the respondents in the like manner as was enjoined by the order dated 31.07.2012.

39. Fourthly, it is contended that the action for Contempt of Court has been taken by the learned Single Judge *suo moto* and this Court has no power to take *suo moto* action in civil contempt. It is contended that *suo moto* action can be taken only in cases of criminal contempt and the jurisdiction with respect to criminal contempt is vested with the Division Bench by virtue of Section 15 of the Act. We are unable to appreciate this contention as in the present case the action taken by the learned Single Judge is not *suo moto* but pursuant to a contempt petition filed by the

respondents. The learned Single Judge also took note of the violation of the order dated 31.07.2012 at the instance of the respondents. Although, the question whether an action for civil contempt can be initiated *suo moto* by the court does not arise in the facts of the present case, in our view, there is no restriction which would debar a High Court from taking action for wilful disobedience of its orders. By virtue of Article 215 of the Constitution of India, a High Court being a Court of record has the inherent power to punish the contempt of itself. The Act also does not curb the powers of a High Court to punish for wilful disobedience of its orders in any manner. Section 15 of the said Act as referred to by the learned senior counsel is wholly inapplicable to the facts of the present case as the same relates to cognizance in cases of criminal contempt.

40. Fifthly, it is contended that the actions of the appellant do not constitute any interference in the course of justice and by virtue of Section 13 of the Act, the action ought to be taken only in cases where there is an interference in the due course of justice. It is contended that the learned Single Judge has not considered this aspect and therefore, the impugned order is vitiated.

41. The contention that the learned Single Judge has ignored the provisions of Section 13 of the Act is also erroneous. It is well settled that repeated wilful and deliberate disobedience of the orders of the court would undoubtedly interfere with the due course of justice. The Supreme Court in the case of **Patel Rajnikant Dhulabhai and Anr. v. Patel Chandrakant Dhulabhai and Ors.**: (2008) 14 SCC 561 cited with approval the following

passage from the decision in the case of *Attorney General v. Times Newspaper Ltd.*: (1973) 3 ALL ER 54:

“There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity;....”

After referring to several decisions the Supreme Court further held as under:-

“70. From the above decisions, it is clear that punishing a person for contempt of court is indeed a drastic step and *normally* such action should not be taken. At the same time, however, it is not only the *power* but the *duty* of the court to uphold and maintain the dignity of courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.”

42. In the present case, there is little doubt that the appellant has repeatedly disobeyed the orders of the court and thus, deprived the respondents from the benefit of the orders passed in their favour and at their instance. There can be no two opinions that the conduct of the appellant substantially interfered with the course of justice. In our view, the learned Single Judge was correct in imposing punishment for the contumacious conduct of the appellant.

43. Lastly, it is contended that the appellant has suffered substantially during the course of the proceedings. During the course of the proceedings, the appellant was referred to VIMHANS Hospital for a medical

examination regarding his mental state. Relying on the report submitted by VIMHANS, this Court had directed that (i) no communication addressed by the appellant qua any issue should be given any cognizance or be taken into consideration (ii) the appellant should not be entrusted with any work in the Department as it may affect the public at large. The appellant was given a copy of the medical report as per the order passed by the Supreme Court on 22.04.2013. After obtaining the report, the appellant had filed complaints against the doctors before the Medical Council of India. We are informed by the learned senior counsel for the appellant that during the proceedings before the Medical Council of India, the said doctors have retracted the findings submitted in their report and have categorically stated that the appellant does not suffer from psychotic disorder. It is stated that by virtue of the interim order passed by this Court, the appellant has been deprived of his work and has thus already suffered enough punishment and he ought not to be inflicted any further punishment.

44. With respect to this submission, it is relevant to note that when the present appeal was taken up for hearing on 16.01.2013, apparently, a suggestion was made by the Counsel appearing for the appellant that the appellant was not medically fit and an explanation for his conduct was sought to be given on this basis. The counsel appearing for the appellant had further submitted that the appellant was willing to undergo an examination at VIMHANS. This was, obviously, to substantiate the contention that the appellant's action was not that of a sound person. The events that have transpired indicate that doctors at VIMHANS also did not find the appellant medically fit. The natural corollary to that was that the

appellant could not be expected to discharge his official functions. The report given by the doctors is stated to have been challenged and it is now asserted that the appellant is medically fit. Apparently, the doctors have, pursuant to a complaint instituted by the appellant, withdrawn their earlier finding with respect to the mental ill health of the appellant.

45. We are of the view that this controversy need not detain us any further. The question about the medical fitness of the appellant had arisen on account of the submissions made by the counsel for the appellant, apparently to suggest that the appellant could not be held responsible for his conduct. Since now it is asserted that the appellant is not suffering from any mental disorder, we have heard the present matter and are proceeding on the basis that the appellant is fully responsible for his actions. However, we are unable to accept that the period for which the appellant has been without work, should be considered as a punitive measure against the appellant. The directions passed by this Court on 16.01.2013 were as a consequence of the submissions made before this Court on behalf of the appellant. The said directions were not passed by this Court to impose any punishment on the appellant and cannot be considered as such.

46. We have heard the learned counsel for the appellant at length and we have no doubt that there is no remorse or regret on the part of the appellant with respect to his contumacious conduct. The apology tendered by the appellant before the learned Single Judge is neither sincere nor an act of penitence or regret and above all not bonafide. In view of the foregoing, we concur with the decision of the learned Single Judge and find no reason to interfere with the same.

47. Accordingly, the present appeal is dismissed as devoid of any merit.
The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

JANUARY 10, 2014
RK/`ns'

