

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CROCP No.18 of 2014
Date of Decision: 05.02.2015

Court on its own motion

.....Petitioner

Versus

Shashi Pal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM

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Present: Mr. Naveen Kaushik, Addl. AG, Haryana.

Mr. Rakesh Gupta, Advocate
for respondent No.1-Shashi Pal.

Mr. Ramesh Kumar Dhiman, Advocate
for respondent No.2 – Om Parkash Ladwa, Advocate.

S.S. Saron, J.

The learned Additional District and Sessions Judge, Kurukshetra addressed a confidential letter dated 04.08.2014 to the Registrar of this Court submitting a transfer application containing scandalous and contemptuous allegations against the Court of which he was the Presiding Officer. The said transfer application was filed by Shashi Pal (respondent No.1) in the Court of learned District Judge, Kurukshetra seeking transfer of appeal titled 'Raj Kumar v. Krishan Kumar' pending in his Court to some other Court. The transfer application was accompanied with the comments of the learned Additional District Judge on the transfer application. It was also submitted that the application had been

moved through a counsel namely Sh. Om Parkash Ladwa, Advocate (respondent No.2) who also committed contempt of Court in view of the Supreme Court judgment in Shamsher Singh Bedi v. High Court of Punjab and Haryana, AIR 1995 SC 1974.

In Shamsher Singh Bedi's case (supra), a notice drafted by an advocate and sent to the Magistrate by an accused who was refused bail in a criminal case containing allegations that the Magistrate had no power to refuse bail to him and by refusing the same, he acted with mala fide intention and with a view not to displease the local police. It was also alleged that the Magistrate instead of showing judicial independence and passing bail orders in conformity with the mandatory provisions of law, he tried to help the local police in their nefarious designs and activities to keep Sarpanch Gurdial Singh in custody as long as possible in order to humiliate him and to put pressure upon him that no complaint should be filed against him.

These remarks against the Magistrate who refused to grant bail, it was held were definitely scandalous and were definitely with reference to the discharge of his judicial function. It was said that the advocate who had drafted the notice in his professional capacity could not escape the responsibility and his conviction by the High Court was upheld.

The learned Additional Sessions Judge also made a reference to the case of Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 wherein it was held that calculated psychological offensives and mind games adopted by counsel to

seek recusal of Judges, needs to be strongly repulsed; besides, the Courts have the power to enforce compliance of judicial orders and also the powers to punish for contempt.

Therefore, it was requested that action under the Contempt of Courts Act, 1971 may be initiated against Shashi Pal as well as his advocate.

An office note on the said letter was put up by the Registrar (Rules) before the Hon'ble Acting Chief Justice for consideration for initiating contempt proceedings against Shashi Pal and Sh. Om Parkash Ladwa, Advocate (respondents No.1 and 2). The request made by the learned Additional District Judge for initiating contempt proceedings against Shashi Pal and Sh. Om Parkash Ladwa, Advocate, District Courts, Kurukshetra (respondents No.1 and 2) was acceded to.

The contempt proceedings were listed for consideration on the judicial side and notice of contempt was issued by this Court on 18.09.2014 to Shashi Pal son of Jagdish Mittal and Sh. Om Parkash Ladwa, Advocate, Kurukshetra, (respondents No.1 and 2); besides, notice was also issued to Advocate General, Haryana for assisting the Court.

It is to be noticed that an application for transfer of the appeal 'Raj Kumar v. Krishan Kumar' was filed by Shashi Pal in the Court of the learned District Judge, Kurushetra. The said appeal was against the order dated 06.05.2014 passed by the learned Civil Judge (Junior Division), Kurukshetra whereby the application under Order 39 Rules 1 and 2 read with Section 151

of the Code of Civil Procedure ('CPC' - for short) filed by the plaintiff/appellant had been dismissed.

It was submitted by the applicant seeking transfer of the appeal (i.e. Shashi Pal – respondent No.1) that he had come to the Court premises in connection with some legal work on 02.07.2014. An advocate friend of his informed him that his case had taken a new turn and it had become difficult to get the matter decided according to law. The reason given was that a new lawyer who is a favourite of the learned Presiding Officer, had been engaged by the appellant Raj Kumar son of Ved Pal. He further informed that recent circumstances and incidents in the bar were such that a new group of five-six lawyers as 'Most Favourable Advocates' of the learned Presiding Officer had been formed. The applicant stated that he got worried and went to many lawyers and every lawyer told him that the new lawyer in his case was 'M.F.A.' (Most Favourable Advocate) of the learned Presiding Officer. It is further alleged by the applicant (respondent No.1 herein) that the measure suggested to him by some lawyers were very amazing and startling. All of them said that there were some 'M.F.As.' (Most Favourable Advocates) of the learned Presiding Officer and they orally suggested a list of those advocates to the applicant.

The applicant then asked his advocate in the case to get another date and not argue the case on 03.07.2014. The case was then fixed for arguments for 15.07.2014. A strange phenomena, it is stated, was observed by the applicant that the

litigants of the concerned Presiding Judge to seek justice were thronging in the chambers of the Most Favourable Advocates. Such advocates earlier charged a petty fee of Rs.3000/- to Rs.10,000/- but started charging Rs.50,000/- to Rs.1,00,000/- for that Court. The applicant's advocate in the High Court, it is stated, was preparing a contempt petition against Raj Kumar (respondent No.1 in the transfer application) and his main advocate for contemptuous drafting. The applicant had still always taken the matter lightly until respondent No.1 Raj Kumar son of Ved Pal openly started saying that all the setting had been done with the Most Favourable Advocate and the case would be decided in his favour on 15.07.2014.

Thereafter, again an advocate of Kurukshetra when he spoke to the above noted Most Favourable Advocate about the politics being played by him in the case of the applicant (Shashi Pal – respondent No.1), he just laughed and gave a smile. The circumstances, created an impact on the mind of the applicant (Shashi Pal – respondent No.1) and he thought of getting the case transferred from that learned Court to another Court. It is further submitted that legally this system was liable to be stopped, may be by requesting Hon'ble the Chief Justice or Hon'ble the Inspecting Judge of Kurukshetra for the year. Otherwise the applicant, it is stated, had no personal ill-will and nothing against the Presiding Officer as he never faced a litigation or appeared as a witness before the said learned Court. The transfer application, it is stated, had been drafted by the

applicant personally as many advocate and even his own advocate has refused to dictate the application. Therefore, it was prayed that the appeal against the applicant may be transferred to any other Judge of District Kurukshetra or with the help of Hon'ble the Inspecting Judge anywhere else before any District and Sessions Judge of Haryana and Punjab under his jurisdiction.

The said application for transfer of the appeal from the Court of a particular Judge is signed by the applicant as also his advocate Shri Om Parkash Ladwa and it was presented by his advocate.

In the comments filed by the learned Additional District and Sessions Judge from whose Court, it was prayed for being transferred, it is inter alia submitted that the contents of the application were utterly false, scandalous and contemptuous. No advocate, it is stated, is favoured or not favoured of the Judge. A reference was made to a decision of Hon'ble the Gujarat High Court in Rajkot Cancer Society v. Municipal Corporation, Rajkot, AIR 1988 Gujarat 63 wherein it was held that it must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. It was said that mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Reference has been made to other judgments. It was submitted that the

decision on the application may be expedited so that his integrity does not remain under a cloud as the pendency of such an application for a long duration adversely affects the integrity of a Judicial Officer.

The learned District Judge, Kurukshetra vide order dated 07.08.2014 dismissed the transfer application titled 'Shashi Pal v. Raj Kumar' being devoid of merits; besides, holding that no ground was made out to transfer the civil miscellaneous appeal from the Court of learned Additional District Judge, Kurukshetra to some other Court.

On notice in the contempt petition, reply by way of affidavit has been filed by Shashi Pal (respondent No.1) stating that Raj Kumar son of Ved Pal filed a civil suit for declaration and permanent injunction on 16.04.2014. In that suit, an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC was filed in which relief for staying the operation of the impugned decree dated 09.04.1997 was sought. Shashi Pal filed his reply to the said application. The said application was dismissed on 06.05.2014. Raj Kumar feeling aggrieved from the said order filed an appeal in the Court of District Judge, Kurukshetra on 09.05.2014 through a Senior Advocate of the District Courts at Kurukshetra. Notice of the appeal was given to Shashi Pal and he engaged a counsel. After filing the appeal, Raj Kumar engaged another counsel, who filed an independent power of attorney, which according to the applicant Shashi Pal meant that the earlier Senior Advocate through whom the appeal was filed had been

superseded. In the interim order, the presence of both the counsel was, however, recorded. Immediately on the engagement of another counsel, the applicant got apprehensive as he felt that there was no occasion to replace the earlier counsel, who was senior to the counsel later engaged.

At that time, it is stated, there was some dispute going on between the members of the Bar Association, Kurukshetra and the learned Presiding Officer. The General House had even passed a resolution against the Presiding Officer on 02.05.2014. However, some of the members of the Bar including the Advocate later engaged by Raj Kumar was against passing of such a resolution. This fact was also noticed by the applicant so he was advised to file a transfer application in order to get justice. The applicant approached and requested various advocates to file a transfer application; however, no one except for Sh. Om Parkash Ladwa, Advocate agreed to file the same but with the condition that the applicant himself would draft the transfer application on his own being an advocate by profession and Sh. Ladwa would argue the said transfer application.

The applicant drafted the transfer application on his own being an advocate by profession and stated the facts as per record. In para 11 of the transfer application it had been specifically pleaded by the applicant that he had no personal ill-will against the Presiding Officer and the application had been drafted by him personally as many advocates and also the advocate engaged by him refused to dictate the application.

Even in the application i.e. the application for transfer, it is stated that no such allegations were levelled which had lowered the dignity of the Presiding Officer; besides, immediately after filing the transfer application the advocate later engaged by Raj Kumar withdrew his power of attorney, which was so recorded in the order passed by the learned Presiding Officer. The transfer application and the main appeal was argued by the advocate initially engaged by Raj Kumar and the advocate who was engaged later never appeared.

The applicant (Shashi Pal - for respondent No.1), it is stated, therefore, had tried to save his interest by filing the transfer application. He had no ill-will or disregard towards the learned Presiding Officer. Even otherwise he has full regard to the justice delivery system and could not dare to level any such allegation which lowers the dignity of the learned Presiding Officer. Above all, it is stated by the applicant that he unconditionally tenders an unqualified apology and the rule may be discharge.

Reply by way of affidavit has also been filed by Shri Om Parkash Ladwa, Advocate, District Courts Kurukshetra. It is stated by him that he had not committed any act which amounts to criminal contempt. However, he has every regard to perform his professional duties being a practicing advocate in the District Courts, Kurukshetra since 1995. As such he could not dare commit any act which would amount to committing any criminal contempt.

The actual facts it is stated were that Shashi Pal approached him to file a transfer application for transferring the appeal pending in the Court of learned Additional District Judge, Kurukshetra. Shashi Pal, it is stated, in fact is an advocate by profession but because of his ill-health he stopped working as an advocate. He was totally disturbed and approached him to file the transfer application. He was reluctant to file the said application but he was requested time and again and also paid his fee. So in discharge of his professional duties he was compelled to file the transfer application. As Shashi Pal has been an advocate so he drafted the transfer application on his own and brought the same to him. The contents of the transfer application were mentioned by the applicant (Shashi Pal) himself and he even mentioned in para 12 that the transfer application had been drafted by him personally as many advocates and even his own advocates refused to dictate the application.

Therefore, it is stated that the deponent (Sh. Om Parkash Ladwa, Advocate) filed the application in the discharge of his professional duty and no wrong or derogatory remarks had been made in the transfer application. Even in the transfer application no such allegations had been levelled, which affected the integrity of the Judicial Officer. However, in the alternative, it is stated that the deponent tenders unqualified apology if the Court comes to the conclusion that certain act had been committed by the deponent which lowers down the integrity of the Judicial Officer.

It is to be noticed that the contents of the transfer application, which contain allegations against the learned Additional District Judge of having formed a group of Most Favourable Advocates, who could only get justice and that such advocates were charging exorbitant fees for getting the work done, indeed are disparaging and derogatory which tend to lower the majesty and dignity of law and the Courts. These definitely, therefore, are contemptuous not only on the part of the applicant who filed the transfer application but also his advocate who signed the same.

The Supreme Court in M.Y. Shareef and another v. Hon'ble Judges of Nagpur High Court and others, AIR 1955 SC 19 held that counsel who sign applications or pleadings containing matter scandalizing the Court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court, and it is no duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. It was further held that once the fact is recognized that the members of the bar have not fully realized the implications of their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics, in such cases even a qualified apology may well be considered by a Court. In border line cases where a question of principle about

the rights of counsel and their duties has to be settled, an alternative plea of apology merits consideration; for it is possible for a Judge who hears the case to hold that there is no contempt in which case a defence of unqualified apology is meaningless, because that would amount to the admission of the commission of an offence. Every form of defence in a contempt case cannot be regarded as an act of contumacy. It depends on the circumstances of each case and on the general impression about a particular rule of ethics amongst the members of the profession.

It was further held that there was considerable misconception amongst a section of the Bar about advocates' responsibilities in matters of signing transfer applications from one bench to another bench of the High Court. A section of the Bar was under an erroneous impression that when a counsel is acting in the interests of his client, or in accordance with his instructions he is discharging his legitimate duty to his client even when he signs an application or a pleading which contains matter scandalizing the Court. They thought that when there was conflict between their obligation to the Court and their duty to the client, the latter prevailed. It was held that it was thus necessary to have that question settled and any effort on the part of the counsel to have that point settled could not be regarded as contumacy or a circumstances which aggravated the contempt.

The above observations of Hon'ble the Supreme Court were reiterated in Radha Mohan Lal v. Rajasthan High Court

(Jaipur Bench), (2003) 3 SCC 427. It was held that unfounded and irresponsible allegations against the judiciary by an advocate merely on the instructions of his client was impermissible. An Advocate is not merely an agent or a servant of his client, he is an officer of the Court. There could be nothing more serious than an act of an advocate if it tends to impede, obstruct or prevent the administration of law or it destroys the confidence of the people in such administration. It was said that the hope expressed in Shareef's case (*supra*) that this kind of conduct would not be repeated by counsel in this country, and no more test cases of this kind would have to be sought out had been belied despite the passage of nearly 50 years.

In Shamsheer Singh Bedi's case (*supra*), it was held that an advocate cannot escape his responsibility for drafting a scandalous notice to a Magistrate on the ground that he did so in his professional capacity.

In M.B. Sanghi, Advocate v. High Court of Punjab & Haryana, (1991) 3 SCC 600 while deciding a criminal appeal filed by an advocate against an order of the High Court, it was held by the Supreme Court as follows:- (SCC pp. 602-03, para 2)

“The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to

browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this

concept from the British, it would not be out of place to mention the struggle strong-willed Judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much-endearred concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence.”

Therefore, the allegations as made by Shashi Pal applicant in the transfer application, who himself is an advocate and his counsel Shri Om Parkash Ladwa are indeed unfortunate. Despite Hon'ble the Supreme Court reiterating the law in Shareef's case (supra) in Radha Mohan Lal's case (supra) and emphasizing that despite passage of nearly 50 years the hope expressed in Shareef's case (supra) would not be repeated being belied, there are yet unfortunate incidents which have come up before the Courts.

During the course the learned counsel appearing for Shashi Pal and Shri Om Parkash Ladwa, Advocate (respondents

No.1 and 2) submitted that they tender their unconditional apology on behalf of the contemners. They accepted their mistakes and submitted that they were ill-advised.

Mr. Rakesh Gupta, Advocate, who is now Chairman of the Bar Council has appeared in the case and has assured the Court that he shall circulate guidelines in consonance with the Supreme Court Judgments in M.Y.Shareef's case (supra); M.B. Sanghi's case (supra); Radha Mohan Lal's case (supra) and Shamsher Singh Bedi's case (supra).

In the circumstances, it would be just and expedient to put a quietus to the matter by accepting the apologies of the respondents who have expressed their genuine apologies and regrets; besides, are remorse in what they have done.

Accordingly, the rule is discharged.

(S. S. Saron)
Judge

(Gurmit Ram)
Judge

05.02.2015
A.Kaundal

Note: Refer to reporter.