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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS.(CRL) 1/2016**

% ***Judgment dated 14th March, 2016***

COURT ON ITS OWN MOTION

..... Petitioner

Through : Mr.Vivek Sood, Senior Advocate, *Amicus Curiae*, with Mr.Siddharth Gupta, Advocate.

versus

MOHAN NAIR

..... Respondent

Through : Mr.Atul T.N. and Mr.Harsh Raghuvanshi, Adv. for the respondent along with respondent.
Mr.Amrit Singh and Mr.Aditya Swarup Aggarwal, Advs. for Mr.Rahul Mehra, Standing Counsel (Crl.) for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present contempt proceedings have been initiated against the respondent pursuant to the reference dated 14.12.2015 received from the Additional District & Session Judge, Labour Court-XIX, Karkardooma Courts, Shahdara, Delhi, whereby it was alleged that the respondent, Mr.Mohan Nair, Authorised Representative of the Workmen, who appeared before the Court on 11.12.2015, had misbehaved in the Court and showed utmost disrespect to the Court.
2. While issuing notice in these contempt proceedings on 5.2.2016, the respondent was directed to remain present in Court. On the next date of hearing i.e. 4.3.2016, the respondent was present in Court along with his

counsel. On 4.3.2016 the respondent had tendered an unconditional apology to the Court. The respondent was directed to tender an unconditional apology on an affidavit.

3. Today, the respondent is present in Court and he is also being represented through his counsel. Affidavit in terms of the order dated 4.3.2016 has been filed by the respondent explaining his conduct in the Court on 11.12.2015.
4. Learned counsel for the respondent submits that he has been representing the workmen in the Labour Court for the past many years and the respondent herein, who is the Authorised Representative of the workmen, has a clear and unblemished record. Counsel further submits that the respondent has always shown utmost respect and regard to the Court and has also acted in the best interest of the institution, which is also apparent from the conduct of the respondent as after the notice was issued in these proceedings, he on the very first date of hearing tendered an unqualified apology to the Court and, thus, the apology tendered should be accepted.
5. Respondent submits and undertakes to the Court that in future he will ensure that while appearing in the Courts or otherwise he would not behave in any manner, which would lower the dignity of the Court.
6. We have heard learned counsel for the respondent, the respondent and Mr.Vivek Sood, learned Senior Counsel, who has been appointed as an *Amicus Curiae* by this Court vide order dated 5.2.2016, and also perused the affidavit filed by the respondent.
7. The law with regard to acceptance of unqualified apology is well settled.
8. It is well settled that an apology tendered must be sincere, unconditional and *bona fide* and the Court has power to reject an apology which is not satisfactory or is an afterthought and simply intended to avoid punishment.

9. In the case of ***M.B. Sanghi, Advocate v. High Court of Punjab and Haryana & Ors.***, reported at (1991) 3 SCC 600, it was held as under:

“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 concerned judge 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 concerned judge 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 the 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 endeared 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. And here is a member of the profession who has repeated his performance presumable because he was let off lightly on the first occasion. Soft-justice is not the answer--not that the High Court has been harsh with him--what I mean is he cannot be let off on an apology which is far from

sincere His apology was follow, there was no remorse--no regret--it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned judge was lying--adding insult to injury--and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape. The High Court rightly did not accept it. That is what this Court had done in a similar situation in L.D. Jaikwal v. State of U.P., [1984] 3 SCC 405. This Court described it as a 'paper apology and refused to accept it in the following words:

"We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting judge will feel free to decide any matter as per the dictates of his conscience on account of fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fail in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts."

10. In the case of ***Court On Its Own Motion v. Gulshan Bajwa***, 141 (2007) DLT 111, a Division Bench of this Court observed as under:

"18. The law of contempt is primarily intended to maintain the dignity of the Court and to ensure that there is no undesirable interference with the administration of justice, particularly, where

the offending acts are so grave that they directly interfere with the administration of justice and scandalize the Courts or the Judges. This special jurisdiction has to be invoked, more so, when the offending acts are intentional and are motivated. An attempt to earn small gains by a contemnor at the cost of hurting the system of administration of justice would necessarily require to be deprecated at the very initial stage.”

11. In the case of ***M.Y. Shareef and Another v. Hon’ble Judges of the Nagpur High Court and Others***, reported at AIR 1955 SC 19, it was held as under:

“10. The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.....”

(Emphasis added)”

12. It is settled law that the apology tendered must be sincere and unconditional and must be made at the earliest opportunity available. The apology should not be a mere expression of regret and till the Court is satisfied that the apology is genuine and prompt and not a device on the part of the contemnor to escape punishment.
13. Having regard to the submissions made, taking into consideration the apology tendered by the respondent by way of the affidavit dated 8.3.2016, the fact that the apology was tendered by the respondent at the very first opportunity available and the undertaking given to Court today, we are of the view that the apology tendered is sincere and remorseful and the same is not an empty formality. Accordingly, the unconditional apology tendered by the respondent is accepted. Notice of contempt is discharged.

14. Contempt petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 14, 2016

msr

