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

% ***Judgment dated 24th February, 2016***

+ **CONT.CAS.(CRL) 2/2016**

COURT ON ITS MOTION

..... Petitioner

Through : None

versus

DHIRAJ JAIN

..... Respondent

Through : Mr. A.S. Chandhiok, Senior Advocate
with Mr. Chandan Kumar, and Mr. A.
Sharma, Advocate for contemnor

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. A learned Single Judge of this Court on 18.12.2015, passed the following order:

“1. Present contempt petition had been filed alleging contempt by the Members of the Central Administrative Tribunal as they had failed to discharge their duties inasmuch as they had failed to pass a reasoned order on 14th July, 2014.

2. In the petition, it was averred that Members of the Central Administrative Tribunal verbally abused the petitioner and did not permit him to present his case on 25th February, 2014.

3. In fact, the contempt case which read like a writ petition contained not only accusation against the petitioner's own previous counsel but also an attempt to challenge the earlier Division Bench's order dated 09th September, 2010.

4. On 28th September, 2015, petitioner who appeared in person withdrew the contempt petition with liberty file appropriate proceedings in accordance with law.

5. After a gap of nearly three months, present review petition has been filed along with an application for condonation of delay

stating that petitioner had never agreed to withdraw his case and he had not been allowed to argue his petition. He also states that he felt embarrassed in Court as the counsel sitting in Court had repeatedly laughed at him.

6. Mr. Jagjit Singh, learned counsel for respondent states that the allegations in the present application are patently untrue. He states that false averments have been made in the application and strict action must be taken against the petitioner as otherwise it would be very difficult to curb frivolous litigations.

7. In the opinion of this Court, the averments in the application are blatantly untrue. It seems that the petitioner is in the habit of making accusation against all adjudicating authorities.

8. Since the allegation against the Tribunal Members and this Court are virtually identical, this Court has no doubt that petitioner lives in a 'make-believe world'.

9. There is also an apparent contradiction in what the petitioner states. If this Court had coerced the petitioner to withdraw his contempt petition, then it is not understood as to why he had to wait for a month to apply for a certified copy and why did he file the present petition after nearly three months. Moreover, if the court had coerced the petitioner to withdraw the contempt petition, there is no question of any of the lawyers in Court having laughed at him.

10. As an aspersion has been cast not only against this Court, but against the Members of Central Administrative Tribunal as well as the petitioner's own previous counsel and the Division Bench that had dealt with the petitioner's case, the present review petition and application are dismissed with cost of Rs.15,000/- which is directed to be recovered from the petitioner's salary and deposited with the Prime Minister's Relief Fund.

11. Registry is directed to open a separate file under Article 215 of the Constitution of India against the petitioner. In that file, present order as well as the photocopy of the present paper book shall be placed on record.

12. Issue notice of the proceedings under Article 215 of the Constitution of India to the petitioner.

13. Petitioner is directed to file a reply as to why a strict action under Article 215 of the Constitution of India be not been taken against him.

14. Let a copy of this order be placed in all the proceedings filed or to be filed by the petitioner as well as by the respondent.

15. This Court is of the view that if it does not curb the tendency of the litigants lying in Court, it would be very difficult to dispense justice.

List on 27th January, 2016.

Order dasti under the signature of Court Master to petitioner and counsel for respondent.”

2. Respondent appeared before this Court on 27.01.2016 and sought an adjournment. Matter was adjourned to 05.02.2016 when it was noted in the order that an unconditional apology in the form of an affidavit had been tendered by the respondent contemnor.
3. Mr. A.S. Chandhiok, learned Senior Counsel appearing on behalf of the respondent along with the respondent has drawn the attention of the Court to an affidavit submitting an unconditional apology. Respondent has prayed that his unconditional apology be accepted. In the affidavit of unconditional apology, the respondent has also averred that filing of review petition was a folly due to utter lack of understanding in relation to the principles of law.
4. In the case of ***Court On Its Own Motion v. Gulshan Bajwa, 141 (2007) DLT 111***, a Division Bench of this Court [of which one of us was a member, (G.S.Sistani,J)], 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.”

5. 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)

6. 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. 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."

7. In the case of ***RE: Vinay Chandra Mishra***, reported at (1995) 2 SCC 584, the Supreme Court highlighted the fact that the rule of law is the foundation of democratic society. In para 39, it was held as under:

"39. The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority

of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

8. We have carefully examined the affidavit submitting the unconditional apology.
9. In the affidavit of unconditional apology, the contemnor has unconditionally withdrawn all the allegations made either in the contempt petition and also in the review petition. He has categorically stated that since he had been appearing in person, he had no experience of the High Court and the Tribunals and he made certain remarks under a mistaken belief without any intent or in any manner to bring any disrespect and disrepute to the members of the Tribunal and the High Court. He has also admitted that he had voluntarily withdrawn the contempt petition before the High Court as being not maintainable and the filing of the review petition was under a mistaken belief. In the affidavit, he also sincerely regretted for every word in the review petition. Undertaking was also given that he

would also not file such proceedings in the Tribunal as well as the High Court. Paras 3, 4 and 5 of the affidavit read as under:

- “3. That I had been appearing in person and having no experience of the Hon’ble Court and the Hon’ble Tribunals, made remarks in the Contempt Petition as well as in the Review Petition under a mistaken belief. I never had any intent, in any manner to bring any disrespect or disrepute to the members of the Hon’ble Central Administrative Tribunal much less this Hon’ble Court.
4. I have highest regard for everyone who occupies and adorns the chair of justice. I erred while even thinking to pen down allegations in the Petition and in the Review Petition. This Hon’ble Court was kind enough to advise that the Contempt Petition was not maintainable. I had voluntarily withdrawn the said Contempt Petition filed before this Hon’ble Court as being not maintainable. The filing of the Review Petition was under also a mistaken belief that review against such an order lies before this Hon’ble Court. I sincerely regret for every word stated in the said Review Petition. I reiterate I had no intent to say anything in respect of the hearing that took place before this Hon’ble Court on 28th September, 2015 and the fact that on being put to notice that the Petition was not maintainable I withdraw the same. I submit that to err is human and knowing the constitutional jurisdiction vested in this Hon’ble Court and also the magnanimity with which Your Lordships is imbued may consider accepting my unconditional apology and drop the proceedings directed by this Hon’ble Court vide order dated 18th December, 2015. There was no coercion from any quarter for my withdrawing the said Petition. I undertake that I shall not file any similar proceedings or petitions ever in any Hon’ble Tribunal/Court including this Hon’ble Court.

5. That I was under a folly to file the Review petition and due to utter lack of understanding in relation to the principles of law.”
10. 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.
11. Taking into consideration the submissions made by Mr. Chandhiok as also the apology tendered by the respondent contemnor and also taking into consideration that the apology was tendered at the very first opportunity available to the respondent, we are of the view that there is an element of remorse on the part of the respondent. The apology tendered is sincere and remorseful and the apology tendered in this case is not an empty formality. Accordingly, we accept the unconditional apology. Notice of contempt is discharged. The petition is disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 24, 2016

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