

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL CONTEMPT PETITION NO. 01 OF 2006.**

Ashok Govindrao Bilolikar,  
Age 46 years, II Adhoc Additional District  
and Sessions Judge, Parbhani. ...Petitioner

Versus

- 1) Ramchandra Kisanrao Kagne,  
Age 55 years, Advocate,  
resident of Kagnewadi Tq. Gangakhed  
(As per bailiff Report 0 Exh. 3 in Cri. M.A.  
No. 48 of 2005) and At Parbhani.
- 2) State of Maharashtra. ...Respondents

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Mrs. S. D. Tambat, Advocate (Appointed) for petitioner.  
Mr. R. K. Kagne, respondent No.1 party – in – person.  
Mr. M. M. Nerlikar, , Addl. Public Prosecutor, for respondent  
No.2/ State.  
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**CORAM : T. V. NALAWADE &  
SMT.VIBHA KANKANWADI. JJ.**

**DATE : 31-08-2018.**

**ORAL JUDGMENT : ( Per Smt. Vibha Kankanwadi, J.)**

1. Present petition has been filed by learned 2<sup>nd</sup> Ad-hoc Additional Sessions Judge, Parbhani under Sec. 15 (2) of The Contempt of Courts Act, 1971 for taking action against respondent and punishing him.

2. Respondent/ Advocate is practising in Parbhani Court. He was representing an accused who was facing trial under Section 376 (2) (f) of Indian Penal Code in Sessions Case No. 52 of 2001. The case was tried before the petitioner. Evidence of the prosecution was recorded and thereafter statement of the accused under the provision of Section 313 of Code of Criminal Procedure was to be recorded. The matter was kept for final arguments on 07-10-2005. Petitioner heard the arguments on that day. He started dictation of the Judgment around 12.00 noon. After he had dictated the Judgment up to the point of holding the accused guilty. Thereafter the work of transcription of the Judgment was undertaken. He completed the work of checking the Judgment till 05.00 to 05.15 p.m. Then the accused was called upon to make submissions on the point of sentence. Respondent No. 1 thereafter, got up and started shouting loudly. He snatched the note book of Stenographer Mr. Ugle and flung in the Court. The said note book hit the head of learned A.P.P. Mr. R. R. Sharma. Thereafter, Peon Mr. Gaikwad on duty had picked up the same and handed it over to Stenographer Mr. Ugle. Petitioner was requesting respondent No. 1 to keep clam, but he was not in mood to listen. Respondent No. 1 then threatened as to, "He would see, how judgment is given. Bullying of the Court will not be tolerated. Fool Magistrate." (Translation of, "कोर्ट कसा निकाल देते तेच पाहतो कोर्टाची दादागिरी चालू देणार नाही, बेवकूफ मॅजिस्ट्रेट" ). When

petitioner tried to resume the dictation, respondent No. 1 once against flung the note-book of the Stenographer after snatching it. Respondent was threatening that, he has made complaint and petitioner should not pronounce Judgment. Petitioner has stated that, the conduct of the respondent amounted to scandalisation and interference in the administration of justice. Petitioner was required to get up and inform the incident to Sessions Judge. Petitioner has convicted the accused and then issued show cause notice to the respondent. Petitioner has also drafted the complaint on the same day of Judgment and sent to Court. In the complaint he has alleged that, accused (Present respondent No. 1) has committed offence punishable under Sec. 228 and 353 of Indian Penal Code. Petitioner has also stated that, conduct of the respondent with other Judicial Officers is also same. He threatens the judicial officers. Petitioner has prayed for taking action under Contempt of Courts Act against respondent No. 1 by making this reference.

3. The present Contemnor – respondent No.1 filed reply along with affidavit by raising following points ;

(i) He is practicing advocate since last 18 years,

(ii) The scope and nature of contempt of Courts Act is different. The Hon'ble Supreme Court has laid down that the procedure prescribed either under the Code of Criminal

Procedure or under the Evidence Act is not attracted to the proceedings initiated under Section 15 of the Contempt of Courts Act. The High Court can deal with such matters summarily and adopt its own procedure. Therefore, this Court cannot look into the statements of witnesses appended to the petition.

(iii) The proceeding is barred in view of proviso to Section 10 of the Contempt of Courts Act as an offence under Section 228 of Indian Penal Code was initiated against him by the petitioner. He has given the root cause or causes for the dispute between him and the Judges in general. And

(iv) The facts of the case were given and then it is stated that he had filed application Exhibit 69, 70 and 71 in order to have compliance of Section 235 (2) and Section 234 of Code of Criminal Procedure as they are mandatory. According to him the petitioner had illegally detained the accused to whom he was representing for about five years and three days. He had also made complaint to the Principal District Judge as well as this Court. He, therefore, prayed for the dismissal of the petition.

(v) It is also stated that, as a interpreter of law and as he has criticized the Indian Judges and the judiciary, sometimes

he files complaint against them before the President of India and the Parliament, however he is being harassed. He has also stated that, if necessary, he would file an application before the Hon'ble Supreme Court under Article 32 of the Constitution of India.

4. Rejoinder to the contempt petition has been filed by the petitioner on 31-08-2007 wherein he has relied on the decision in *Court on its motion Versus Milkhi Ram and others*, reported in 1992 Cri. L.J. 2130, and *Daroga Singh and others Versus B. K. Pandey*, reported in AIR 2004 Supreme Court 2579, on the point that initiation of two distinct proceedings, one under Contempt of Courts Act and another for the offence punishable under Section 228 of the Indian Penal Code do not amount to double jeopardy.

5. After presentation of the petition this Court by its order dated 08<sup>th</sup> March 2006, issued notice to the respondent No.1 - Contemnor to show cause as to why action under Section 15 (2) of the Contempt of Courts Act 1971, be not taken against him for having committed Contempt of Courts Act. In spite of service of notice, respondent No.1 did not remain present, and therefore, by order dated 14<sup>th</sup> June 2006, bailable warrant came to be issued. The record shows that, on many days thereafter the warrant was not served and again and again the bailable warrants were issued / time

was extended. Even after the service of bailable warrant when the respondent No.1 did not appear, this Court by order dated 27-08-2007, upon a request made by the respondent No.1, matter was adjourned to 21-09-2007. When on 21-09-2007 respondent No.1 was absent, non-bailable warrant was issued. He was brought before this Court on 13-02-2008 by executing the warrant, and thereafter, he was released on bail. Thereafter, he has filed his reply. It will not be out of place to mention here that, thereafter failure on certain occasion he had remained absent, and therefore bailable warrants were issued against him, ultimately he has remained present.

6. In order to ascertain whether the conduct of the respondent No.1 as stated in the petition attract the said definition of "criminal contempt", the facts are required to be considered, not only from the petition itself, but also from the documents which have been produced, reply and the documents produced by the respondent No.1.

7. We have heard learned advocate Mrs. S. D. Tambat appointed for the petitioner, respondent No.1 in person, and learned Addl. Public Prosecutor Mr. M. M. Nerlikar for respondent No.2 - State.

8. At the outset, a fact is required to be noted that, respondent No.1 was representing an accused who was facing trial before the

petitioner in Sessions Case No. 52 of 2001 for the offence punishable under Section 376 (2) (f) of Indian Penal Code. As regards date of incident is concerned, the presence of the respondent No.1 before the petitioner on 07-10-2005 in that matter is not denied by the respondent No.1. The learned appointed advocate for the petitioner submitted that, when the petitioner was hearing the accused on the point of sentence, at that time the respondent No.1 stood up and started shouting loudly, he had snatched the shorthand notebook from the Stenographer Mr. Ugle. Respondent No.1 was shouting loudly that, he will not allow the petitioner, who is the presiding officer of the Court, to dictate the order of awarding sentence to the accused. Though the petitioner was asking him to calm down, he has bent upon his behaviour and he flung that notebook / steno diary in open Court, it was struck on the head of Mr. R. R. Sharma, learned A.P.P. who was present in the Court hall. The diary was picked up by the peon Mr. Gaikwad attached to the Court and even after the petitioner had tried to resume the dictation on the point of sentence, the respondent No.1 again started shouting and giving threats stating that, he has already sent complaint by Fax to the Hon'ble Supreme Court and High Court against the petitioner. He abused the petitioner by uttering words, " कोर्ट कसा निकाल देते तेच पाहतो, कोर्टाची दादागिरी चालू देणार नाही, बेवकूफ मॅजिस्ट्रेट. " All these facts are amounting to scandalization and giving threat to the Court

restraining him from doing his judicial duty.

9. The respondent No.1 in person has submitted that, the petition is not maintainable in view of the proviso to Section 10 of the Contempt of Courts Act. He submitted that, petitioner has filed complaint against him for the offence punishable under Section 228 and 353 of Indian Penal Code, and it was pending before learned Judicial Magistrate First Class At Parbhani. However, he submitted that, now the said case has been dismissed-in-default. But when a subordinate Court had taken cognizance of the contempt, alleged to have been committed by invoking the sections under Indian Penal Code, then this Court cannot take cognizance of the contempt. He also submitted that, he is fighting for the cause of his clients. He tried to submit that, the procedure that was adopted by the learned Judge was wrong and he had illegally taken the accused in his custody around 12.00 noon. The accused was not heard on the point of sentence till then, and therefore, in the recess a complaint was made by him to the Sessions Judge, Parbhani and a complaint was forwarded to the higher authorities. Therefore, he had filed the application Exhibit 69 in which he had clearly stated that the detention of the accused is illegal.

10. While passing order on that application, the petitioner admitted that the accused is in his custody and it was stated that, he

has been taken in custody on the basis of his misconduct. In order to explain the said alleged misconduct of the accused, it was submitted that, after recording of the statement of the accused under Section 313 of Code of Criminal Procedure, the accused had left and he had not signed on the statement. The learned Judge had preponed the case only for the sake of taking signature of the accused on the statement under Section 313 of Code of Criminal procedure. This act cannot be stated to be the misconduct of the accused, therefore, taking him in custody by the Judge was with a prejudice mind. After application Exhibit 69 was rejected, he had filed application Exhibit 70, so that the petitioner shall not pronounce the sentence, the application was then rejected. Further an application was given at Exhibit 71 for adjournment on 10-10-2005. In fact, after rejection of application Exhibit 70, the accused was taken in magisterial custody, and thereafter, the matter was adjourned. After rejecting the application Exhibit 71, the sentence was pronounced. After giving all these facts, the respondent No.1 - Contemnor submitted that, the entire procedure was adopted by the concerned Judge was wrong and in fact he was insisting that the presiding officer should adopt proper procedure. If he goes protecting the interest of his client then he cannot be said to have misbehaved with the Court. He also submitted that, except this incident, there was absolutely no dispute between him and the

petitioner. He has worked before him even after the alleged incident.

11. Learned Addl. Public Prosecutor submitted that, there is no bar to this Court in taking cognizance even though the petitioner has filed complaint under Section 228 and 353 of Indian Penal Code. He relied on the decisions in, *Bathina Ramakrishna Reddy Vs. State of Madras, A.I.R. 1952, Supreme Court 149*. It was the proceeding under Contempt of Courts Act, 1926. It was held that,

*"Sub-section (3) of Section 2 excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate Court are punishable as contempt under specific provisions of Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code."*

12. Further reliance has been placed on the decision in *State of Madhya Pradesh Vs. Revashankar*, reported in *AIR 1959 Supreme Court 102*, wherein it has been observed that,

*"There are innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in courts and one type of such interference is found in cases where there is an act which amounts to "scandalising the court itself" : this scandalising might manifest itself in various ways but in substance it is an attack on individual Judges or the court as a whole with*

*or without reference to particular cases, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties:"*

13. Further reliance has been placed on the decision in, *Arun Paswan, S.I., Versus State of Bihar and others*, reported in *AIR 2004 Supreme Court 721*. In this case also when the case was filed for the offence punishable under Section 175, 178, 179, 180 and 228 of the Indian Penal Code, it was held that, the action under Contempt of Courts Act is not barred in view of proviso to Section 10 of the said Act. He submitted that, the conduct of the respondent No.1 was definitely contemptuous.

14. At this place itself it is noted that, respondent No.1 had made submission that, the authorities which have been relied by the learned Addl. Public Prosecutor are not applicable since the facts in those cases are different.

15. We would like to consider the facts first. The petitioner has given his set of facts and further he had forwarded the statements of his staff including the statement of Stenographer Mr. Ugle, peon Mr. Gaikwad and learned A.P.P. Mr. R. R. Sharma. We do not agree with

the respondent No.1 that, we cannot consider those statements. When those persons were present when the incident took place then definitely their statements are required to be taken into consideration. All of them have stated that, when the petitioner was about to hear the accused on the point of sentence, respondent No.1 got up and started shouting loudly. He had snatched the steno diary and had flung it, which had hit the learned A.P.P. Mr. R. R. Sharma. Not only this but after the diary was given back to the Stenographer by the peon and petitioner tried to resume the dictation, once again the respondent No.1 started giving threats. Even filing of applications Exhibit 69 and 70, with a specific purpose that the petitioner shall not deliver / pronounce the Judgment. This is definitely an act of scandalising and obstruction in the administration of justice.

16. Interference in the administration of justice by giving threats, snatching the steno diary, addressing the judicial officer in loud voice, are definitely serious acts, more so when such acts have been done by an advocate who is the officer of the Court. In fact, an advocate is supposed to maintain the decorum of the Court, he should promote and see that all others who are present should also maintain the decorum of the Court. Obstruction in judicial process by an advocate cannot be tolerated. In fact by the said act on the part of the respondent No.1, the petitioner could not discharge his

duty. This may amount to an offence under Section 353 of the Indian Penal Code but that does not debar this Court from taking cognizance under Contempt of Courts Act. Another aspect that is required to be noted is that, in the entire reply the respondent No.1 has not denied the incident in specific words. Therefore, he cannot take shield that he had snatched the steno diary and flung it in order to protect the interest of his client. All the while the respondent No.1 tried to project that due to procedural lapse on the part of the petitioner, he was trying to protect his client. Even if for the sake of arguments we accept that there was any defect in the procedure, yet it could have been agitated in proper manner. For that purpose, respondent No.1 cannot, as an advocate snatch the steno diary when the dictation from the dais going on, shout loudly, give threat by saying that, "he will see how the petitioner will give the Judgment". He cannot be an obstacle in the dispensation of justice. In fact he had snatched the steno diary twice and flung it in the open Court. The threatening language that was used is definitely contemptuous. Reliance can be placed on the observation in, *High Court on its own motion Versus Pradeep Pandurang Suryawanshi*, reported in *2011 (1) Bom. C.R. (Cri.) 703*, wherein it has been observed that,

*"24. The allegations as to interfering in the administration of justice process by way of giving threats to the Judicial Officer is definitely a serious matter, more*

*so, when such threats are coming from a responsible senior Police officer i.e. Contemnor in the present case. On this aspect, following observations from the Authority (King Vs. Davies) 1, 1906 1 KB 32 (40) are reproduced with advantage :*

*175. Attacks on Judge Cause Obstruction in Justice. Attacks upon the Judges excite in the mind of the people a general dissatisfaction with all the judicial determination and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of judges as private individuals but because they are the channels by which the King Justice is conveyed to the people;"*

17. In the petition itself it was stated that, the petitioner has filed complaint for the offence punishable under Section 228 and 353 of Indian Penal Code namely Summary Criminal Case No. 1821 of 2005, the copy of the complaint was also produced along with the petition, thereby the petitioner has not suppressed any fact. Even after taking note of the fact that, such complaint was filed, this Court had issued the notice to the respondent No.1. Now it is the say of the respondent No.1 that, this Court cannot take cognizance of the petition in view of proviso to Section 10 of the Contempt of Courts Act, 1971. In all the above said three decisions the Hon'ble Supreme Court has held that, Though complaint is filed invoking sections from Indian Penal Code i.e. under Section 228 etc., the

cognizance of the petition under Section 15 of the Contempt of Courts Act is not barred. Especially the ratio in three Judges Bench of the Hon'ble Supreme Court in, *State of Madhya Pradesh Vs. Revashankar*, reported in *AIR 1959 Supreme Court 102*, (Supra) is required to be taken into consideration.

18. Further in all the above three Judgments was relied by Hon'ble Supreme Court once again in, *Daroga Singh and others Vs. B. K. Pandey*, reported in *AIR 2004 Supreme Court 2579*, and it has been further observed that,

*"What is made punishable under Section 228, IPC is the offence of intentional insult to a Judge or interruption of Court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalise the Court or which would tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings."*

At the cost of repetition therefore it can be said that, when twice the steno diary was snatched while dictating the Judgment and then threats were given, abuses were given in the open Court, it definitely amounts to interference with the administration of justice.

19. At the cost of repetition we do not agree with the respondent No.1 that, he was by such acts was protecting the interest of his client. We do not intend to discuss as to whether taking the accused in custody by the petitioner amounted to illegal detention or not but the fact is certain that when the presiding officer was dictating the Judgment, the advocate representing the accused should not have attempted to stop the presiding officer from pronouncing the Judgment. The redressal would have been at a different authority, it cannot justify the acts done by the respondent No.1 – contemnor.

20. It will not be out of place to mention here that, in AIR 2004 Supreme Court 2579 (Supra) it has been held that, when the High Court had decided to proceed with the contempt proceedings in a summary manner and due opportunity was afforded to the contemnor / contemnors, and after verifying the material available before it, convicted the contemnors, then no fault can be found in the procedure adopted by the High Court. In this case also all the procedure have been adopted and full opportunity has been given to the respondent No.1 to put forth his say. No doubt Hon'ble Supreme Court has laid down that the proceedings for contempt of Court should be decided expeditiously but in this case the record shows that many times bailable warrants were issued against the respondent No.1 in order to secure his presence. After he was

produced under the execution of non-bailable warrant, he was released on bail, yet thereafter also he remained absent and then again bailable warrant was issued. Even thereafter full opportunity has been given to the respondent No.1 to put forth his say.

21. Considering the reasons above stated, in our opinion, the acts of the respondent No.1 - Contemnor amounted to scandalising the Court and obstruction in the administration of Justice, therefore he is required to be dealt with sternly.

22. After disclosing that the respondent No.1 - Contemnor is held guilty, an opportunity has been given to him to submit on the point of sentence. He submits that, he does not want to say anything. We have also heard the appointed advocate for the petitioner and learned Additional Public Prosecutor on the point of sentence. They both have submitted that, Judicial Officer should not be lower down by anybody, however taking into consideration the age of the Contemnor appropriate sentence may be awarded.

23. When it comes to awarding punishment under Section 12 of the Act, it is well settled that awarding fine is by way of rule and awarding simple imprisonment is by way of exception. We have no doubt in our minds that this is an exceptional case involving an Advocate who is the officer of the Court and though he has been practising in law for so many years. Definitely as an advocate it was

his duty to represent his client but when the client, that is the accused, who was facing the trial was being punished by the Court of law, then he should have accepted the sentence. If at all anything was to be agitated, it should have been by set principles of law.

24. Taking into consideration the present age of the respondent No.1 - Contemnor, we sentence the Contemnor to suffer simple imprisonment for one (01) week and pay fine of Rs.2,000/- (two thousand), in default, to undergo simple imprisonment for two (02) days more. The petition is disposed of accordingly. Respondent No.1 is hereby taken in custody. Registry to provide copy of the Judgment to respondent No.1 free of costs.

25. Fees of the appointed advocate Mrs. S. D. Tambat is quantified at Rs.5,000/- (five thousand), which should be given from the High Court Legal Services Sub-Committee, Aurangabad.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

**(T. V. NALAWADE)**  
**JUDGE**

*vjg/-.*