

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPCP) NO.3 OF 2018

IN

CRIMINAL CONTEMPT PETITION NO.7 OF 2016

(SUO MOTU (COURT'S ON ITS OWN MOTION...VS.. SATISH MAHADEORAO UKE)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Ms Ketki Joshi, A.P.P. for State.
 Shri Satish Mahadeorao Uke in person.

CORAM : Z.A.HAQ AND V.M.DESHPANDE, JJ.

DATE OF RESERVING ORDER : 16/01/2019.

DATE OF PRONOUNCING ORDER: 23/01/2019.

Heard.

2. The Contemner-Satish Mahadeorao Uke had filed Civil Revision Application No. 26 of 2016 under Rule 7(i) of Chapter II of the Bombay High Court Appellate Side Rules, 1960 praying that the Registry of this Court be directed to issue copies as sought by him by Copying Application No. U-3733/E-122 R. No.122 dated 4th April 2016. Learned Single Judge of this Court disposed the Civil Revision Application by order dated 6th June 2016. The learned Single Judge found that the Contemner, who happens to be a lawyer, was appearing in person in several cases in which he was party. The learned Single Judge found that the Contemner-Satish Mahadeorao Uke had been indulging in filing fake, frivolous and vexatious cases with allegations to scandalize the Court and the officers of the Court. In paragraph No.41 of the order delivered in Civil Revision Application No. 26 of 2016, the learned Single Judge observed that earlier the contemner had made some wild allegations against the sitting Judge of this Court in a matter

before the Hon'ble Supreme Court and then the contemner had made a statement before the Hon'ble Supreme Court that he will be withdrawing Writ Petition No.11825 of 2015 which was filed by him and in which serious allegations were made against the sitting Judge of this Court.

After exhaustively considering the conduct of the Contemner, the learned single Judge ordered as follows:

“45. In terms of Rule 5 in Part II of the Rules to regulate proceedings for contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971, this order can constitute an information for taking suo motu action for contempt of Court under Article 215 of the Constitution of India, and it will have to be accordingly placed before Hon'ble the Chief Justice of Bombay High Court for appropriate orders in terms of clauses 5(f) and 5(g) of the said Rules. Hence, I pass the following order :

(1) Issue notice to the applicant-Satish Mahadeorao Uke to show cause as to why the proceedings for criminal contempt should not be instituted against him for the draft charges framed in this order? Notice is made returnable on 1-8-2016.

(2) This order be placed before Hon'ble the Chief Justice of Bombay High Court in terms of clauses 5(f) and 5(g) of the Rules under Chapter XXXIV of the Bombay High Court Appellate Side Rules to constitute the appropriate Division Bench, as required by Section 18 of the Contempt of Courts Act, to take cognizance of the act of contempt of Court by treating this order itself as a petition for contempt of Court, in accordance with law and Satish Mahadeorao Uke be shown as the contemnor.

(3) The Division Bench assigned with the matter may consider the question of taking Satish Mahadeorao Uke in judicial custody pending the decision of the contempt proceedings to prevent him from instituting such proceedings and/or publicizing the allegations against sitting Judges, officers of this Court, including lawyers practising in this Court, so as to cause an embarrassment and interference in the course of justice.

(4) During the pendency of the proceedings before Hon'ble the Chief Justice and/or before the Division Bench of this Court for taking decision on the cognizance of contempt of Court, the applicant-Satish Mahadeorao Uke, who shall be the contemnor, is restrained from instituting any proceeding either himself or through anyone else to perpetuate the act of contempt of Court alleged in the draft charges framed in this order, and/or to approach any public communication system, including the newspaper and the media for publication of the allegations covered by the draft charges framed in this order.

(5) The Registry of this Court in the Principal Bench and the other Benches of this Court is directed not to entertain any litigation at the instance of the Satish Mahadeorao Uke involving the Registry of this Court, the sitting Judges of this Court, and other officers of this Court, including any lawyers practising in this Court, without an application for leave to institute such proceedings filed in this proceeding for contempt of Court. If such application is made, the office shall place the matter either before Hon'ble the Chief Justice if the matter is pending with him or before the appropriate Division Bench seized of the matter of contempt for passing appropriate orders.

(6) It is made clear that the Registry of this Court is not prevented from entertaining any petition, application, etc., at the instance of Satish Mahadeorao Uke in respect of the matters not related to the draft charges levelled in this order.

(7) The ad interim orders in terms of clauses (4) and (5) above, shall operate from today, i.e. 6-6-2016, and the same shall continue to operate till the decision on it by the Division Bench. All the aforesaid ad interim orders are subject to further orders to be passed by the Division Bench, which shall be assigned this matter by Hon'ble the Chief Justice. Unless the orders are varied, the same shall continue to operate pending these proceedings.”

Pursuant to the above order, suo-motu proceedings were registered against the Contemner vide Criminal Contempt Petition No.7 of 2016. This criminal contempt petition was decided by the judgment dated 27th and 28th February 2017. The

Contemner is punished with simple imprisonment for two months and fine of Rs.Two Thousand, and in default payment of fine further simple imprisonment for fifteen days. This judgment was challenged by the Contemner before the Hon'ble Supreme Court in Criminal Appeal No.1425 of 2017 which is dismissed on 8th August 2017 by the following order :

- “1. Delay condoned.*
- 2. We have heard the learned counsel for the appellant.*
- 3. On due consideration we do not find any cogent ground to formally admit this appeal to regular hearing. Contempt, rather repeated acts thereof, is ex facie apparent. We, therefore, affirm the order of the High Court holding the appellant guilty of commission of contempt and sentencing him to simple imprisonment for two months and fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for further period for fifteen days. However, we direct that the cash security of Rs.2,00,000/- (Rupees two lakh) which has been forfeited by the impugned order (paragraph 18) be returned to the appellant.*
- 4. With the aforesaid modification of the order of the High Court dated 27th and 28th February 2017 the present appeal is dismissed by refusing admission.”*

Then the Contemner filed Review Petition (Crl.) No.445 of 2017 before the Hon'ble Supreme Court on which following order is passed by the Hon'ble Supreme Court on 26th October 2017:

“By order dated 28th July, 2017, the appellant-review petitioner, who was found guilty of commission of contempt and was sentenced to simple imprisonment for two months with fine of Rs.2,000/- with default clause by the Bombay High Court, was granted exemption from surrendering pending disposal of the Criminal Appeal No.1425 of 2017. The appeal has been dismissed on 8th August, 2017.

The appellant-review petitioner has not surrendered till date. The order dated 28th July, 2017 has spent its force and unless there is a fresh order of exemption from surrendering, the appellant-review petitioner is duty bound to surrender.

We have heard Shri Mathews J. Nedumpara, learned counsel for the review petitioner, in the open Court review hearing.

While issuing notice on the review petition, we issue further notice to the appellant-review petitioner to show cause as to why if the review petition is not to be entertained and is to be dismissed, the sentence imposed upon him by the Bombay High Court should not be enhanced.

Notice is made returnable on 13.11.2017.”

Then the Hon'ble Supreme Court passed order on 7th February 2018, as follows:

“Mr. Kapil Sibal, learned Senior Counsel appearing for the review petitioner/ appellant, who is also present in court, submits that the review petitioner/ appellant would like to tender an unconditional apology to the High Court and withdraw all allegations made by him.

The review petitioner/ appellant is permitted to move the High Court.

List the matter after necessary orders are passed by the High Court.

Liberty to mention the matter is granted to the review petitioner/appellant.”

3. As per the permission granted by the Hon'ble Supreme Court, the Contemner has now filed the present application to tender unconditional apology. The application runs in to 135 pages including 2 pages of prayer clause. The Contemner has summed-up the allegations made by him against the various Judges, Government Pleaders, Registrar, Deputy Registrar and staff of this Court. The Contemner has stated in the application that he is withdrawing all the allegations made by him in the proceedings before various Courts.

4. The learned Additional Public Prosecutor has pointed out that the Contemner himself has stated that Regular Criminal Case No. 4250 of 2008 (State vs. Satish) is pending. The Deputy Commissioner of Police (Detection) Crime Branch, Nagpur City has filed an affidavit sworn on 15th November 2018 stating that during the period from 2007 to 2018 seven offences were registered against the Contemner out of which Crime No.175 of 2018 (for the offences punishable under Sections 120-B, 420, 423, 424, 447, 465, 467, 468 and 471 of the Indian Penal Code) registered at Police Station, Ajni was under investigation of the Economic Offences Wing. It is stated that in Crime No.17 of 2007 (for the offences punishable under Sections 461, 468, 506-B of the Indian Penal Code) chargesheet is filed and the case is pending before the trial Court. It is stated that in three matters the police have forwarded "B" Final Report, in one matter "C" Final Report is being prepared and in one matter the Contemner is acquitted on 9th March 2015. It is further pointed out that the Bar Council of Maharashtra and Goa has issued a notification dated 27th June 2018 in cases of professional misconduct by certain lawyers and by this notification the Bar Council of Maharashtra and Goa has debarred Contemner-Satish Mahadeorao Uke from practicing as an Advocate for one year from the date of the order.

5. The point is whether the apology tendered by the Contemner is unconditional and can be accepted in the facts of the case. The answer would be an emphatic "No". Though the Contemner has stated that he is tendering unconditional apology, his conduct does not substantiate it. The Contemner has nowhere undertaken that he will not repeat the acts/ mischief again. During the course of hearing of this application also the conduct of the Contemner was not proper.

6. To consider whether the apology tendered by the Contemner can be accepted or not and in view of the material on record showing the activities of the Contemner, the Contemner was directed to give details of the prosecutions pending against him and the learned Additional Public Prosecutor was directed to file counter affidavit. On 17th October 2018, the learned Additional Public Prosecutor made a grievance that the Contemner was adopting browbeating tactics and he had given an application dated 14th September 2018 to the Information Officer of the Government Pleader Office asking as to who had given instructions to the Additional Public Prosecutor to prepare the submissions and whether the instructions were given orally or in writing.

7. Earlier, during the course of hearing of the *Suo Motu* Criminal Contempt Petition No. 7 of 2016, the Contemner had filed Criminal Application (APPCP) No. 7 of 2017 praying that Shri P.B. Varale, J (one of the member of the Division Bench hearing Criminal Contempt Petition) should recuse himself from hearing the matter. The Contemner had filed another application i.e. Criminal Application No.8 of 2017 praying that Shri Z.A.Haq, J (another member of the Division Bench) should recuse himself from hearing the criminal contempt petition. The Division Bench dismissed the two applications observing that such course of action cannot be permitted and the party cannot ask the Judge hearing the matter to recuse himself from hearing the matter.

8. In these circumstances, it is not possible for us to accept the apology tendered by the Contemner, specially as we find that there are no bonafides on the part of the Contemner.

9. The learned Additional Public Prosecutor has argued that after dismissal of the Criminal Appeal No. 1425 of 2017 and after the judgment passed by this Court punishing the Contemner is affirmed by the Hon'ble Supreme Court, it would not be open for this Court to re-open the matter.

We are not considering this submission, as on merits we find that the apology tendered by the Contemner is not required to be accepted.

10. We have passed this order being fully conscious of the settled principle that the Superior Court, while dealing with the contempt matters have always adopted the approach that majesty lies in magnanimity and pardoning the Contemner on his tendering of unconditional apology is the normal rule. But we have not been able to convince ourselves to accept the apology tendered by the Contemner, as we find that the apology is not unconditional and in fact, it cannot be said to be an apology at all.

Hence, the application is **dismissed**.

(V.M.DESHPANDE, J.)

(Z.A.HAQ, J.)